United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7249

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 76-7249

ANNA R. JOHNSON and ROBERT K. JOHNSON

Plaintiffs-Appellants

-against-

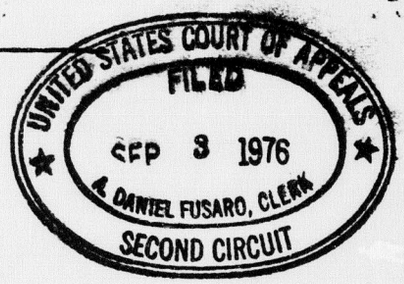
PHILLIP KNAPP

Defendant-Appellee

JOINT APPENDIX

VOLUME I

(Pages I-330)



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MR. RHEINGOLD: Mrs. Johnson.

A N N A R U D O L P H J O H N S O N,

a plaintiff, called as a witness in her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RHEINGOLD:

Q Mrs. Johnson, I am going to stay back over her in an effort to have you keep your voice up. I am over her by the jurors, so I feel if I can hear you then his Honor and the jurors can hear you.

Could you tell us your date of birth, please?

A 9/17/32.

Q Does that make you 43 today?

A This September.

Q Where did you grow up, Mrs. Johnson?

A I grew up in the town of Trumbull, Connecticut.

Q When did you get married?

A May 24, 1958.

Q Was that to Mr. Robert Johnson?

A Yes, it was.

Q Have you had children?

A Yes, I have had four children.

Q Could you tell us their names and their present ages, please?

A The oldest one is Cynthia; she is 13. My son is 11, Kenneth. Andrea is 9, and Caroline is 7.

Q What is the health of your four children?

A The three older ones are perfectly fine. The younger one has cerebral palsy.

Q Is that a condition that has existed since birth?

A Yes, it is.

Q How far did you go in school,Mrs. Johnson?

A Through high school.

Q Have you ever been employed?

A Yes.

Q What type of work did you do?

A Office, clerical work.

Q After you got married to Mr. Johnson, did you work?

A Not very long.

Q From that time on you have been a housewife?

A Yes.

Q Would you tell his Honor and the jury what your general health was -- put your eyes aside -- your health otherwise, up until 1972?

A I never had anything wrong with me.

Q Were you ever in the hospital except for the delivery of your children?

A No, I was not.

Q Did there come a time when you began to notice something in relationship to your eyes?

A Yes. Everybody saw the apples on an apple tree and I couldn't see them.

Q When was that?

A That was, I think, in '64. '67, I guess it was, when I went to Mr. Krajcik.

Q Who was the first doctor you consulted for your eyes?

A An optometrist.

Q Was he an optometrist?

A He was an optometrist, Dr. Krajcik.

Q What down is he in?

A He is in the town of Monroe.

Q Is that Connecticut?

A Yes.

Q What year do you place that in, to the best of your recollection?

A I think it was 1967.

Q How many times in all did you see that man?

A Once.

Q What did he tell you about your eyes?

A He told me my eyes were fine, I had nothing to worry about.

Q Did you then consult another doctor about your eyes?

A Yes, and I went off feeling very happy and gay and consulted -- all of a sudden, I felt I couldn't see, so I went to a new doctor, an M.D.

Q Who was that?

A Dr. Pearlstone.

Q Did he examine your eyes?

A Yes, he did.

Q What year was that?

A It must have been '67 or '68. About six months in between, I think.

Q What did Dr. Pearlstone tell you about your eyes?

A That I had cataracts.

Q In both eyes?

A I believe he said I had them in both eyes. I am not sure.

Q How many times did you see Dr. Pearlstone?

A Once.

Q When did you next consult the doctor?

A I consulted my family doctor to see why there was a discrepancy between two doctors.

Q What's the name of your family doctor?

A Dr. James Garrity.

Q He is located where?

A On Elm Street in Monroe.

Q What followed that?

A He recommended that I come down to Columbia Presbyterian Medical Center to Dr. Knapp.

Q Had you ever had any contact with Dr. Knapp before?

A No, I did not.

Q Is that Phillip Knapp?

A Yes.

Q When for the first time did you see Dr. Knapp?

A I don't remember.

MR. RHEINGOLD: I think we can agree it was in 1970, Mr. Begos?

MR. BEGOS: Yes.

A It was 1970.

Q What happened when you went to see Dr. Knapp?

A He just told me I had nothing to worry about, I just had cataracts.

Q What was your vision like at that time?

A Well, I thought it was pretty good. I could drive, I could read, I could do everything I had normally done.

My left eye was a little bit different than my right eye.

Q What did you notice, let's say, if you looked out of your left eye alone?

A That I couldn't see quite as far out of my left eye as I could see out of my right eye.

Q What did Dr. Knapp do after he told you you had cataracts?

A He told me to go home and come back in a year.

Q Did you come back for a second visit?

A Yes.

Q To your recollection, there were two visits in 1970 and one in 1971?

A I believe there was.

Q When you came back in 1971, what did Dr. Knapp do and say?

A That they were progressing, but they hadn't reached the point of operation yet.

Q Did you come back again in 1972?

A Yes, I did.

Q Can you tell me when that was?

A That was in September of 1972.

Q Did Dr. Knapp ask you about your vision at that time in 1972?

A No, he tested me out and I said to him, "I can't see anything out of my left eye very much but light and dark and shadows."

Q What did you tell him about your right eye?

A I didn't tell him anything.

Q Tell us what you could see out of your right eye in September of 1972.

A Well, I could see my children's school work to help them with it. I could see to read the Reader's Digest or a newspaper. I could see to drive a car and do my shopping.

Q Did you tell any of that to Dr. Knapp?

A No. He didn't ask.

Q Did Dr. Knapp examine your eyes that day?

A Yes, he did.

Q Did he tell you what he found as a result of the examination?

A He told me my eyes were very short -- were ready to be operated on, when did I want to go in and have them done.

Q What did you say?

A I said whatever he felt was best I would do.

Q Did you express any doubts or fears to him?

A Yes. I told him, "Don't forget, I have four very tiny children and I am worried about them, and I am scared."

Q What did Dr. Knapp say to you?

A He told me that there was nothing to be scared about, it was a very minor operation. "I just remove the lens and put you with bifocals and you can do anything you have ever done before."

Q Did he express to you any degree of success that he had with this type of operation?

A Yes. He told me that 95 percent of all people operated on with cataracts come out fine, and there was no reason for me to think I wouldn't --

Q No reason to think what?

A That I wouldn't be fine.

Q Did he tell you that he was going to operate on both eyes?

A Yes, he did.

Q Did he tell you his procedure as far as the timing of the two eyes?

A He told me he would operate a week apart

and I would be in the operation -- I would be in the hospital for two weeks, and then my recuperating period would be just two months.

Q Can you tell me when you went into the hospital?

A Yes. I went in on the 24th of October.

Q Is that 1972?

A Yes, it was.

Q For the remainder of the month of September, after you had seen the doctor, and in early October, were you able to carry on your normal household work?

A Oh, yes. I did my shopping. I had to stock the house with food so I could come into the hospital.

Q Were you able to drive up until the day you went into the hospital?

A Yes, I was.

Q Did you drive?

A Yes, I did.

Q When you went into the hospital, was the surgery performed on you the next day?

A Pardon?

Q Was surgery performed on you the day after you got into the hospital?

A Yes.

Q Which eye did Dr. Knapp do first?

A My left eye first.

Q When he performed that surgery, were you awake or asleep?

A Awake.

Q Were you able to hear what was being said?

A Yes.

Q After that surgery, did there come a time when the second surgery was performed?

A The following Tuesday.

Q That was -- which eye was done then?

A The right eye.

Q Were you awake during that operation?

A Yes, I was.

Q Did you hear anything said during the course of the second operation by Dr. Knapp?

A Yes. I heard the doctor and the young doctor or the intern, whoever it was, talking, and Dr. Knapp said, "She needs her eyes; she has got four young children," and then they were working on my eye, and pretty soon he said, "Watch it, watch it, watch the cornea," and then he stopped.

And then there was pretty quiet and there was a lot of mumbling.

Q Would you tell us now what Dr. Knapp said?

A When I saw him as soon as we got back to the room, I asked him what had happened to my eye.

And he said, "Nothing."

And I said, "I know something happened to this eye. It's not the same. Please tell me what happened."

And he ignored my question and left.

Q When you said, "Watch it," in the other testimony you gave, was that what you heard while you were being operated upon?

A Yes.

Q Was that a statement that Dr. Knapp was making to someone else?

A Yes.

Q Do you know who the other person was?

A I don't know who he was.

Q Did Dr. Knapp say anything during the operation that you heard, other than what you just said about the children and about "Watch it, watch it"?

A No. I heard them just mumble, talk, small talk that I couldn't decipher.

Q Did there come a time when you left the hospital?

A Yes.

Q How long was that after the second operation?

A A week.

Q I forgot to ask you, at the various times you went to Dr. Knapp before the operation to his office, was your husband with you?

A My husband has been with me every time I visited Dr. Knapp.

Q Was he present at some times when you were a patient at the hospital?

A Yes, he was. Every other night.

Q When you got out, did you have any further contact with Dr. Knapp?

A Yes. I went back to visit him, I don't know whether it was every other day or every two days.

Q Then did that decrease in frequency?

A That decreased as time went on.

Q When you left the hospital, did Dr. Knapp give you any eyeglasses?

A Yes. He gave me just a frame with -- just glasses until I got a bifocal, just a pair of thick lenses.

Q Did you utilize those?

A Yes, I did.

Q What was your vision like in the month or two following your discharge from the hospital?

A Well, I could read the paper. I didn't get into driving a car, or anything, because I wasn't allowed out of the house.

Q Did you continue to see Dr. Knapp?

A Yes, I did.

Q What happened to your vision as the months went along?

A It was supposed to improve so that in two months I could drive a car, and it never did. It just kept going downhill.

Q When you say "supposed to improve," who had said that to you?

A Dr. Knapp. He said in two months I would be driving my car and doing everything I have always done.

Q Let's go, say, to the first of the year, to January 1973, what was your vision in fact like?

A I couldn't do anything. I was getting so I couldn't see anything.

Q Do you recall a difference between the two eyes?

A Pardon?

Q Was that out of both eyes that you had trouble

seeing or one eye?

A I really don't know.

Q Did you see Dr. Knapp in January and February of 1973?

A Yes, I did.

Q Could you tell us what happened on those visits or afterwards?

A Every time I visited him and asked him when I was going to get my glasses and when I was going to be able to drive, he kept saying -- he just ignored me and just said, "Well, it takes time, you know." He was very abrupt.

Q Was that Dr. Knapp's demeanor throughout the time that you dealt with him?

A Yes. He never would give me an answer to any question I asked. He was very abrupt and ushered me out of the office very quickly most times.

Q On any of the occasions that your husband was with you, did he ask similar questions of Dr. Knapp?

A I don't believe he did.

Q Did there come a time when Dr. Knapp had you see another doctor at the staff there?

A Yes. He sent me down to Dr. Coleman.

Q Did he tell you why he was sending you there?

A No. He told me he is going away on vacation, but he wanted me to go down there on it was my regular visit to him, and he said, "You are to go in and see Dr. Coleman and he is going to do a test on you."

Q Was that your first contact with Dr. Coleman?

A Yes, it was.

Q What did Dr. Coleman say and do when you went to see him?

A He said he was going to put a dye in my eye that would turn me orange -- in my arm he was putting the dye, and it would turn me orange, and that he would look in my eyes.

Q Did he do that test?

A Yes, he did.

Q After he did it, what did he tell you?

A He said there was some pinholes in it and that I have to come back the next week and he was going to shoot the laser beam into it and take care of everything.

Q Did he describe the laser beam to you?

A No, he did not.

Q Did you come back the following week?

A Yes, I did.

Q What did he do then?

A He put the dye back in my eye and looked it

over and dilated the pupils and he took me upstairs to a room, and I had to sit in front of this machine while bright lights were clicking in front of me, of my left eye.

Q Was the laser beam just given to your left eye?

A Yes, it was.

Q Did he say anything to you at any time about your right eye? Referring to Dr. Coleman.

A Yes. Dr. Coleman said my right eye just wouldn't dilate, so therefore he couldn't shoot the laser beam into it, so I was to come back for treatment.

Q Did you ever get any treatment to your right eye from Dr. Coleman?

A No.

Q How long did you stay under Dr. Coleman's care?

A For the following visit.

Q Did you get any more laser therapy to your left eye then?

A No.

Q Did Dr. Coleman tell you what the purpose of the laser treatment was?

A To seal the few pinpoints in my eye so that

I could see, keep the --

Q Did he make any prediction to you about when you would be driving again or seeing again?

A He said there would be no problem, this automatically clears up everything, and I would be driving.

Q What happened after that next visit to Dr. Coleman?

A He looked at it and he says, "Well, it has improved a little bit," and he said, "Well, Dr. Knapp is back, so you are to go to see him and he will tell you what's wrong with your left eye -- your right eye."

Q Did you see Dr. Knapp the same day?

A Yes, I did.

Q Can you tell us what month we are into now?

A We are in the month of February.

Q What did Dr. Knapp say to you when you went back to see him?

A He didn't say anything. He -- I asked him what was wrong with my eye and when I was going to get glasses, and he just said nothing. He picked up a cigarette and smoked it and ushered us out, and said he would see us in another month or two.

Q Did he prescribe any drugs for you?

A He put some drugs in my eyes, but I don't know

what they were, and I had drops.

Q Did you come back the next month?

A Yes, I did.

Q When was the last time you saw Dr. Knapp?

A May 24.

Q 1973?

A Yes.

Q On that occasion did you ask him again what was wrong with your eyes?

A Yes.

Q What did he say?

A He said it was just one of those things.

Q Did he propose any treatment for your eye?

A He didn't propose anything. He ushered me right out of the office.

Q What did you do then?

A I got very discouraged and had an argument with my husband, and we looked for somebody new.

Q Who did you next consult?

A Dr. Sears.

Q How did you hear about Dr. Sears?

A From a business friend of my husband's.

Q Is that the person who is here in the courtroom today?

A Yes.

Q What is her name?

A Helen Krause.

Q Is she a lawyer?

A Yes, she is.

Q When did you see Dr. Sears for the first time?

A I believe it was in July.

Q Where did you see Dr. Sears?

A I saw him at Yale Medical Center.

Q Have you remained under his care since then?

A Yes, I have.

Q What type of examination or treatment did Dr. Sears give you on the first visit?

A They put me through the mill. I went there at 9:00 o'clock in the morning and they did the most extensive examination I have ever had; all kinds of photography, all kinds of tests on it. I spent until 6:00 o'clock that night with him.

Q When did you have a discussion with Dr. Sears that day, at the end?

A Between 5:00 and 6:00.

Q As a result of your conversation with Dr. Sears, what did you learn?

A He said that the only thing that would save

my right eye -- and my left eye was gone, and the only thing that would save my right eye was to try a corneal transplant.

Q Did he tell you what that was?

A Yes. He said he was going to put a new cornea in my eye and I had one in 200 chance of winning. I said I would take it.

Q Did you continue seeing Dr. Sears through the fall of 1973?

A Yes.

Q Did there come a time when he told you that you were in line to get a corneal transplant?

A Yes.

Q What procedure did that involve?

A I don't know what you mean by "procedure."

Q As far as you went, were you notified you would have to come in the hospital or something?

A Yes. I was put on a waiting list and when there was a transplant available for me, I -- I was on 24-hour call from July until October when I went in. It was a 24-hour deal. You never knew when you were going or not.

Q Would it be more accurate that it was in January of 1974 that you had -- that you went into the

hospital?

A Yes, I did, January 5.

Q That's when you had the corneal transplant?

A That's right.

Q In the months preceding that, did you have any changes in your eye, in the fall and winter of 1973?

A Yes. In the fall I had severe pain.

Q When did that start?

A It started about October.

Q Was this one eye or both eyes?

A No, just my right eye.

Q Would you describe to the jury what the pain was?

A I couldn't keep my right eye open. I couldn't I could open either eye because it would tear or run, and the pain was so bad that I just laid in bed and held onto the back of the bedpost.

Q Did you get any treatment for that pain in your eye?

A I had some pills, but they didn't do any good.

Q Did Dr. Sears explain to you the cause of the pain in your eye?

A Yes.

MR. BEGOS: Objection.

THE COURT: Sustained.

Q When you went in in January 1974, did you have a corneal transplant?

A Yes, I did.

Q How long were you in the hospital at that time?

A I was in the hospital for eight days.

Q Were you awake or asleep during that operation?

A I was asleep during that one.

Q After you got out of the hospital, what was your vision in your right eye?

A In my right eye?

Q Yes. The eye with the corneal transplant.

A Well, it takes time for the cornea to heal, but it was cloudy.

Q Did you continue to see Dr. Sears?

A Yes, I did.

Q Did he give you any more treatment in the right eye?

A Yes, he did.

Q What was that?

A The pressure was up and he was trying to keep it down by medicine, and it wouldn't work, so he gave me --

one day when I went in I expected a normal visit and I went in at 9:00 o'clock, and he said, "We will have to take you to the operating room and try a cryothermo" -- I believe it is called -- "operation to freeze the eye, the pressure."

Q Was that done not with a hospital admission --

A That was just taken down to the operating room, I went right back, and came home.

Q Did there come a time when you went into the hospital again?

A Yes, because this one didn't hold long enough, so he put me back in the hospital and redid the whole operation again.

Q When was that again, about?

A In April.

Q 1974?

A Yes.

Q In April what was the vision in the eye that he was not treating, the left eye?

A It was pretty good. I could see to dial the telephone and things like that.

Q Were you able to drive?

A No, I have never been able to drive since.

Q When is the last time you did drive?

A The day before my cataract operation.

Q After this second hospitalization, what was the vision like in your right eye, the one that had the transplant in it?

A It steadily went downhill.

Q Did it reach a point when you had no vision in your right eye?

A Right.

Q What treatment was then proposed by Dr. Sears?

A He told me that we could try again and see whether it would work this time, and so they worked on the pressure in my eye, and in January they called me up and they had another transplant for me, and I went in on January 12.

Q That's 1975?

A That's right.

Q During the fall of 1974 and the winter, did you continue to see Dr. Sears before you went in?

A Yes, on a regular basis.

Q About how long were you in at the time he did the second corneal transplant?

A I was in twelve days -- eight days, I guess.

Q Were all these hospitalizations at Yale New

Haven Hospital?

A Yes, they were.

Q What happened after that second transplant?

A That was coming along fine, and I was released from the hospital and went home, and it was looking just great, and then I went to visit him one day and he said he would have to put me back in the hospital because it had broken away.

Q Were you rehospitalized?

A I was rehospitalized.

Q Was that in February of 1975?

A Yes, it was.

Q How long were you in the hospital on that occasion?

A 29 or 30 days.

Q What was done for you during that period?

A They tried to seal it up without doing another operation, and it didn't work, so they went back and put three stitches back in my eye.

Q What was your vision like then when you left the hospital at the end of February?

A It was pretty good.

Q Then how did it progress after that?

A Then it went downhill.

Q Did there come a time when you lost the vision in that eye?

A I didn't leave the hospital with good vision. It hemorrhaged while I was in the hospital.

Q Mrs. Johnson, if you want to stop, just let me know.

A It went too fast.

Q Do you want to take a rest or do you want to keep answering questions?

A Pardon?

Q Would you like to stop answering questions for awhile?

A No, this is fine.

Q Tell us again how you left the hospital, the fourth hospitalization in February 1975 --

A It hemorrhaged while I was in the hospital, within the 30 days, and I left without very much sight at all.

Q As the months went by, March, April, May of last year, what was the condition in your right eye?

A There was no sight in my right eye.

Q Is that true today?

A Yes, it is.

Q Just confining yourself strictly to your

right yee, can you see anything at all out of it?

A No, I cannot.

Q Did you continue to see Dr. Sears after you got out of the hospital?

A Yes, I do.

Q When is the last time you saw him?

A Last Wednesday.

Q What treatment, if any, did Dr. Sears give to your left eye?

A I just take the drops and they just check to make sure the pressure is stable, like it is.

Q Has he or any of his associates put anything into your left eye since you got out of the hospital?

A Yes. I had a therapeutic lens put in.

Q So we are clear, that's the left eye?

A That's right.

Q What does that lens involve?

A It is a very thin plastic, clear lens that helps to keep the fluid from building up in my eye, the humidity.

Q Does that stay in your eye at all times?

A It is in my eye at all times.

Q When was that installed in your eye?

A Last fall.

Q Tell us what your vision is like today in your left eye.

A I can't see anybody. I just see to maneuver a little bit around.

Q Can you tell light from dark?

A Yes, I can tell light from dark. It is like I am looking through a thick fog.

I can see movable objects and I can see stationary objects. I just can't see any detail.

Q Can you see to get around your own house?

A Yes. I know my own house.

Q Can you read anything?

A No, I can't.

Q What type of things can you do around the house in terms of housework?

A Well, I try to do the vacuuming, and I did try to do the dusting, but it didn't work, and I do put the laundry in if the children separate it for me, white and dark, and I try to fold it so that they don't have all the responsibility.

Q How about in the kitchen, what can you do there?

A I tell them what to put in the oven, where to set the temperatures, and what to put in the stove.

If there is something to stand and stir, I can stir it until they tell me it is ready.

Q What do you do in the evening, for example?

A Nothing very much. I have been given a recorder for the blind, and I use that to listen to stories or to try to keep up on the news.

Q Is that on records?

A Yes, it is.

Q Was it your youngest child who had cerebral palsy?

A Yes, it is.

Q What type of treatment has your child had to have each night?

MR. BEGOS: I object to this, your Honor. May we have a side bar on it?

(At the side bar)

MR. BEGOS: There is no claim anywhere in his papers with respect to her special family situation. I can realize and appreciate it, but this all catches me by surprise.

THE COURT: He did refer to it in his opening statement.

MR. BEGOS: Yes, your Honor, but I didn't want to object to it in his opening statement.

MR.RHEINGOLD: I haven't stated that she couldn't do housework. I said the woman is blind.

I am bringing out one phase of how it affects her life, that she cannot adequately care for her child.

I think it relates to the damages a jury could give her. I am not claiming on behalf of the child.

THE COURT: Were there any interrogatories that would have elicited this?

MR. BEGOS: No, no interrogatory mentioned this.

THE COURT: Did any interrogatory ask for the elements of damages?

MR. BEGOS: Yes, I believe they did, and there is nothing in there indicating this as an element of damages.

MR. RHEINGOLD: They asked for special damages, which we gave them. They have taken her deposition. They asked for general damages.

Generally, the woman is blind.

THE COURT: Was there any interrogatory that asked for a specification of the various ways in which her activities were restricted?

MR. BEGOS: In that specific way, no.

THE COURT: Then I will overrule the objection.

(In open court)

Q Mrs. Johnson, let's go back to 1972. What type of treatment were you specifically giving to your daughter with cerebral palsy?

A That's before all the operations?

Q Yes.

A I was giving her physical exercise every single night.

Q What did that involve?

A It involves getting down on the floor and exercising her limbs so that she can improve and hopefully get out of braces.

Q Do you do that today?

A I do not do it today.

Q Who has taken over the doing of that?

A My husband has had to train to do it.

Q How about things relating to buying clothes for your children, who does that?

A If I can find a friend to come in and take the children shopping, they buy their clothes. Otherwise my husband will have to take them. He picks them out. I can't do the food shopping. I walk behind the wagon and

tell them what I want and how to pick out a tomato or a cucumber.

Q Before 1972, did you do the food shopping for your family yourself?

A I did the food shopping, I did the gardening, I did the painting on the house, I did the PTA meetings, I did the church baking for the working on the church suppers. I did everything.

Q Did you have any connections before 1972 with the League of Women Voters?

A Yes, I did. I was in the League of Women Voters.

Q Do you do that today?

A No, I don't. There is nothing I can do.

Q Did you have any connections before 1972 with the Brownies?

A I worked with the Brownies as the committee chairman and things like this, yes, and I worked with the Girl Scouts.

Q I take it you do not do that today?

A I am still on the board, but I don't do anything.

Q Did you have any athletic activities that you engaged in by yourself or with your children before

1972?

A Yes. I used to swim and I used to take them bike riding. I played ball with the children, training them.

Q Do you do any of that today?

A No.

MR. RHEINGOLD. Your Honor, I have no other questions of this witness, other than I would like her, with your Honor's consent and the witness' consent, to stand in front of the jury and let them see the condition of her eye today.

I don't mind waiting until the cross-examination is completed, but at some time I would like her to do that.

THE COURT: All right.

Do you anticipate an extensive cross-examination?

MR. BEGOS: Yes, your Honor.

THE COURT: Suppose you go ahead with the cross-examination, or start it, at least, and we will go ahead until 12:45 to recess for lunch.

MR. RHEINGOLD: At that time,your Honor, could I have my client step up?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. BEGOS:

Q Mrs. Johnson, did you in 1964 see Dr. Krajcik?

A Dr. who?

Q Krajcik.

A Krajcik, yes.

Q Was it 1964 or 1967?

A No, 1967.

Q Is it your testimony that you have seen him on only one occasion?

A Yes.

Q On that occasion he said there was nothing wrong with your eye?

A Yes.

Q Was it following that visit to Dr. Krajcik that you saw Dr. Pearlstone?

A That was a little while between times, when I figured there is something wrong.

Q Approximately how long between Dr. Krajcik's visit and Dr. Pearlstone's visit?

A Six, nine months.

Q So that you have seen Dr. Pearlstone in 1967; is that correct?

A I believe so.

Q Mrs. Johnson, do you have any recollection whatsoever of seeing Dr. Pearlstone in 1970?

A I only saw Dr. Pearlstone once. Whatever the date is he said I saw him is when I saw him.

Q At the present time, Mrs. Johnson, do you have a recollection of whether you have seen Dr. Pearlstone in 1967, 1968, 1969 or 1970?

A I saw him when Dr. Pearlstone said he saw me.

Q When do you say he saw you, Mrs. Johnson?

A With four children, dates are confusing, sir.

Q Then you have no recollection at the present time of whether you have seen Dr. Pearlstone in 1967; is that correct?

A I did not see him in 1967. I believe I saw him in 1970.

Q In 1970? Was that at some time shortly before you went to see Dr. Knapp?

A Yes, it was.

Q About how long before you went to see Dr. Knapp?

A Very shortly, because that's when I got upset and went to my medical doctor and then went to Dr. Knapp.

Q It was Dr. Pearlstone who told you for the

first time that you had cataracts; is that correct?

A Yes, it was. It was in the fall, I remember, because I was getting some meat that day.

Q It was in the fall of 1970?

A I believe.

Q Are you sure?

A Yes.

Q Mrs. Johnson, if I told you Dr. Knapp's records reflect that he has seen you for the first time on June 18, 1970, would that refresh your recollection as to when you had seen Dr. Pearlstone?

A No, it would not.

Q You did see Dr. Pearlstone, though, before you saw Dr. Knapp?

A Yes, I did, before Dr. Knapp.

Q Could it have been in the fall of 1969 that you had seen Dr. Pearlstone?

A I saw Dr. Knapp in 1970, so it had to be right before that.

Q Mrs. Johnson, when you have seen Dr. Pearlstone, did he examine your eyes?

A Yes, he did.

Q Do you recall today what type of examination he did?

A The regular, usual eye doctor examination.

Q Did he do the same examination that Dr. Krajcik did?

A Dr. Krajcik is not an MD.

Q Did he do the same type of examination?

A Dr. Pearlstone had different equipment.

Q When Dr. Pearlstone finished his examination, what did he tell you?

A He told me I had cataracts.

Q What else did he --

A Coming.

Q Pardon me?

A He told me I had cataracts coming.

Q Coming, or that you had --

A In my eyes. I had cataracts.

Q Did he tell you anything else about those cataracts?

A No, because I was so shocked I just left.

Q Did you ask him any questions about it?

A No, I did not.

Q Was your husband also present with you?

A No, he wasn't. I drove myself.

Q From there at some point you went to Dr. Garrity?

A Right.

Q And Dr. Garrity referred you to Dr. Knapp; is that correct?

A That's right.

Q Did you make the appointment with Dr. Knapp or did Dr. Garrity make the appointment?

A I believe we made the appointment.

Q You made the appointment?

A Yes.

Q Did you have to wait some time to see Dr. Knapp?

A I don't recall.

Q There came a time when you did see Dr. Knapp?

A Yes.

Q According to his records, on June 19, 1970; is that correct?

A Yes.

Q Did he examine your eyes?

A Yes.

Q Before he examined your eyes, Mrs. Johnson, was a history obtained from you?

A No.

Q No?

A What do you mean by "history"?

Q Were you asked questions about your family history?

A No, I was not.

Q Did you tell anybody, either Dr. Knapp or his secretary, about your family history?

A Very little, if I recall any.

Q Did you tell the doctor os his nurse that your general health was good?

A Yes.

Q Did you tell them that you had no high blood pressure?

A No. It wasn't asked. I didn't know.

Q Did you have high blood pressure in 1970?

A No.

Q Did any member of your family have high blood pressure?

A No.

Q Did you tell them that there was no history of diabetes in your family?

A No. I wasn't asked.

Q Did you tell them that you felt two years ago something was wrong, you went to a doctor, but he didn't tell her -- was to tell her husband but forgot?

A Pardon me?

Q And that you went to another doctor --

A I'm sorry.

THE COURT: I think you misstated. Would you rephrase the question, please?

Q Did you tell the doctor or the doctor's secretary that you had been to a doctor two years before you went to Dr. Knapp?

A No.

Q And that you were to tell your husband something but you forgot to tell him?

A No, I did not.

Q Did you tell the doctor that you had been to another doctor in February of 1970 and was told that you had cataracts?

A I told him I went to another doctor and he told me I had cataracts, and I had been to an optometrist before that, and he told me I didn't, and so I came to Dr. Knapp to find out whether I did or I didn't have cataracts.

Q Mrs. Johnson, did you also tell the doctor that you had a sister who had cataracts removed at the age of 50?

A I don't recall her age. She had one removed.

Q And this sister was older than you, is that not so?

A Yes.

Q And any other member of your family have cataracts removed at an early age?

A No. There is eight of us.

Q And this sister, what is her name?

A Mrs. Mezzanotte.

Q Where does she live?

A In Trumbull.

Q Do you know what hospital she had the cataract removed in?

A I don't recall. It may have been St. Vincent's. I don't know.

Q St. Vincent's in Trumbull?

A No, it would have been Bridgeport.

Q About how many years older than you is Mrs. Mezzanotte?

A About 15, 14.

Q Were you close to Mrs. Mezzanotte, your sister?

A Was I close to her?

Q Yes.

A I don't know how to word it.

Q Did you see her from time to time? You knew about her cataracts, did you not?

A Yes.

Q Did you ever discuss that operation with your sister?

A No.

Q Did you ever discuss problems of that operation?

A No.

Q When you met with Dr. Knapp on June 19th, I assume he examined you, did he not?

A Yes, he did.

Q Did he do basically the same examination that Dr. Pearlstone did?

A Yes, he did.

Q At the conclusion of that examination, did he confirm what Dr. Pearlstone had told you?

A He said I had cataracts and to come back and see him in a year.

Q Did he say anything else to you, to the best of your memory?

A No, he did not. He didn't say anything.

Q Did you ask him any questions at that time?

A I don't recall.

Q Was he curt and gruff to you on that occasion?

A He has been very abrupt with me on all occasions.

Q He was abrupt with you on June 19th, is that correct?

A No, I don't believe he was abrupt. He was just -- he just didn't give me anything. He just told me I had cataracts, and, fine, come back in a year.

Q Did he tell you or did he recommend at that time that the cataracts be removed?

A He didn't say anything. He told me to come back in a year.

Q Mrs. Johnson, you came back on November 18, 1970 to Dr. Knapp, did you not?

A If you say it is there, that's when I came back. I came back whenever his office asked me to.

Q That was approximately six months after the June visit, is that correct?

A That would be correct.

Q At that time did Dr. Knapp make an examination of your eyes?

A Yes.

Q To the best of your recollection, at that time had there been any deterioration of the --

A I don't know. He didn't discuss it with me.

Q From your feeling of being able to move around, were you having any incresing difficulty with your eyes?

A Where are we?

Q We are between June and November of 1970.

A I can't recall.

Q Did you have a conversation with him on that November visit?

A I don't think so.

Q Did he tell you to come back at some future time?

A Yes.

Q Or did someone tell you to come back?

A Yes, he did.

Q If I told you that his next recorded entry is for September 15th of 1971, would you agree with that or disagree with it?

A I would agree with it.

Q You would agree with it?

A I believe so.

Q Did he perform some examination on you on September 15th?

A Right.

Q Was it basically the same examination?

A Yes, it was.

Q Did you have some discussion with him after that examination?

A Is that before I went to the hospital?

Q Not before you went to the hospital?

A I said is that the visit before I went to the hospital?

Q No, no.

A I am confused with dates now.

MR. BEGOS: Perhaps, your Honor, this would be

as good a time as any.

THE COURT: We will break now for lunch and come back at 2:00 o'clock. Do not discuss the case in the meantime with your fellow jurors or anyone else.

MR. RHEINGOLD: As far as the display, your Honor, I will wait until the end --

THE COURT: All right.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

A N N A R. J O H N S O N, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. BEGOS (Continued):

Q Mrs. Johnson, is it fair to say that after being examined by Dr. Krajcik that you were not satisfied with his examination and sought another physician?

A No. I think I just -- I was satisfied with his examination -- no, I really wasn't.

THE COURT: I am sure you didn't intend to refer to Mr. Krajcik as a physician.

MR. BEGOS: I believe as an optometrist they are called doctor, but I am not referring to him as a physician, no.

THE WITNESS: I am sorry. Would you repeat the question, sir?

Q Would it be fair to say that after your examination by Dr. Krajcik, that you were dissatisfied and sought another medical opinion?

A Yes.

Q Then you went to Dr. Pearlstone?

A Yes.

Q Did Dr. Krajcik tell you that you had cataracts?

A No. He told me there was nothing wrong with my eyes.

Q Dr. Pearlstone told you had cataracts?

A Yes, Dr. Pearlstone did.

Q Were you satisfied with Dr. Pearlstone's opinion?

A No. I was confused.

Q That is why you sought out Dr. Knapp?

A That's why I sought out Dr. Knapp.

Q Through the four times that you have seen Dr. Knapp before you eventually went into the hospital for your operation, did Dr. Knapp examine you on each occasion?

A Yes.

Q Did you have conversations with him on each occasio

A Very little.

Q Very little?

A Yes.

Q Did you ask Dr. Knapp at any time on the four occasions that you have seen him before the operation any questions that he refused to answer?

A I don't think so. I don't remember, really.

Q Did he in substance, Mrs. Johnson, on the first occasion tell you that he would wait to see how the cataracts

developed?

A I don't recall.

Q When he confirmed on that first occasion what Dr. Pearlstone had told you, that you had cataracts, were you inquisitive about what your course would be or what would have to be done for the cataracts?

A I don't think so.

Q You don't think so? Did you know at that time that because you had cataracts, that at some time you would require an operation?

A Yes, I knew that it required an operation.

Q Was the source of that knowledge, Mrs. Johnson, your sister or was it some other source?

A No, it was just general knowledge that I had.

Q Had you read anything about cataract surgery or cataracts?

A No, but I knew older people who have had cataract surgery.

Q So that you anticipated that at some time you would come to surgery, is that correct?

A Yes.

Q Going to the last visit before you went into the hospital with Dr. Knapp, did you, after that examination, make any inquiries with respect to the manner and method of

doing the surgery?

A I asked him how long and what it took, and he told me it was just a minor operation --

Q Try to keep your voice up. I can barely hear you and maybe some of the other jurors at the end are having problems.

A I asked him what kind of -- what the operation entailed, and he said, "I remove the lens," and it was a very minor and simple operation, and I said I was worried, that I had four young children, and he said there is nothing to worry about, it is just minor. He said 95 per cent come out fine.

Q Did he use, to your recollection, the precise word 95 per cent or could he have said 90 per cent or better?

A He said I believe 95 per cent.

Q Did you at any time suggest to him or ask him whether or not both eyes could be operated upon during the same hospitalization?

A No, I did not.

Q You did not?

A No.

Q Was it Dr. Knapp that suggested that both eyes be done during the same hospitalization?

A Yes. Yes, it was.

Q When did he make that suggestion?

A When I was there at that day.

Q That last visit?

A Yes. He said the recuperating period was two months and I might as well have them both done at once.

Q Did you ask him anything about having them both done at one time?

A No. I figured he was the doctor, he was doing what I expected of him.

Q Mrs. Johnson, before Dr. Knapp, as you say, suggested this to you, did you know of any other person who had two cataracts removed during the same hospitalization?

A No.

Q So this was the first time --

A I had heard of it.

Q Wait until I finish the question -- I take it that you had heard of or contemplated having both cataracts removed at the same time, is that correct?

A I am not sure, sir.

Q You are not sure?

A No.

Q Could you have discussed two cataract removals with Dr. Knapp at any other time before this last visit?

A No, we did not.

Q Mrs. Johnson, when Dr. Knapp suggested removing both cataracts at the same time, did you indicate to him that you could see perfectly well with your other eye?

A Yes. I told him I could see, I was still driving my car, and he said I should have them done both at the same time, as long as it had to be done.

Q Did you seek any other medical opinion between September and the time you entered the hospital?

A No, I did not.

Q Mrs. Johnson, when you visited Dr. Knapp on that last occasion, was a definite appointment made for you to enter the hospital or were you notified after the visit when you were to enter the hospital?

A I think the nurse set up a definite date, but I am not sure. She had to check I think with the hospital and called us, I believe, and told us the date.

Q You say the nurse. Are you referring to Dr. Knapp's nurse?

A Yes.

Q Was that Mrs. Murphy, or do you know that name?

A Yes, that is Mrs. Murphy.

Q You had spoken to, I assume, Mrs. Murphy on other occasions other than that September occasion, is that correct?

A Yes, just to set appointments up.

Q On that last visit in September, do you recall signing an operative consent form?

A I think I did. I don't really recall.

Q Mrs. Johnson, did you read that before you signed it?

A No. I don't believe I did.

Q Was your husband present when you signed it?

A Yes.

Q Did he read it?

A I don't know.

Q In any event, you could have read on that occasion?

A Right.

Q Could you not?

A Yes.

Q Did your husband on that occasion in September have any conversation with Dr. Knapp?

A No. I don't think he had any.

Q On any of the occasions, the three occasions prior to that September visit, to your recollection, did your husband have any conversation with Dr. Knapp?

A I don't believe so.

Q Mrs. Johnson, you went into the hospital following

that September office visit some five weeks thereafter, is that correct?

A Right.

Q When you entered the hospital, were you examined by a doctor other than Dr. Knapp?

A I don't believe I was.

Q Do you recall whether or not another doctor examined you at this time?

A No, I don't think another doctor touched me.

Q Do you recall whether any intern or resident in a white uniform examined you?

A No. Nobody did, I don't believe.

Q Did you have any conversations with anyone other than Dr. Knapp before that operation, that first operation?

A No, I did not.

Q Following that first operation, and that was on your left eye, correct?

A Yes.

Q Did you have any complaints?

A No.

Q Did you hear any conversation in the operating room that you now recall during that first operation?

A I don't recall any -- what he said or talking. I don't recall.

Q Do you recall who was present in the operating room on that or for that first operation?

A Just that I saw two people.

Q Were they male or female?

A I don't know.

Q Pardon me?

A I can't recall.

Q Following that first operation, I assume a bandage was placed on your eye, is that correct?

A Yes.

Q Between that first operation on your left eye and the operation on your right eye, did you have any conversations with any other doctors or nurses with respect to your condition other than Dr. Knapp?

A I never saw any other doctors.

Q Did you, during that period of time between the first and second operation, see Dr. Knapp?

A Yes, I did.

Q Did you have any conversation with Dr. Knapp?

A No. I remember once I told him I could see the East River out the window.

Q Your left eye remained bandaged, did it not?

A No.

Q Between the two operations?

A No, they put a cone on it and you could pinpoint a hole in it.

Q That was just for an examination, wasn't it?

A No. That was kept on.

Q It was kept on?

A Yes. There was a cone with a pinpoint so you could see to maneuver around.

Q Was this kept on all day?

A Yes.

Q When for the first time did they put this cone on?

A Probably the day after the operation.

Q So that you did perceive a change in the vision in that operated eye, is that correct?

A I did see a change?

Q You perceived, you knew that you could see better in that eye than you could before the operation?

A Yes.

Q Is that correct?

A Yes.

Q Did you have any pain in that eye or in the operative area?

A No, I didn't.

Q Were you getting medications for that eye up

until the second operation?

A Eye drops.

Q Did you have any conversations with Dr. Knapp between that first operation and the second operation?

A No, not really.

Q Do you recall any conversations?

A No, I can't recall any.

Q You recall seeing him every day, though, don't you?

A Yes.

Q Do you recall whether or not your husband had any conversations with Dr. Knapp between the two operations?

A I don't know whether my husband did or not or whether he saw him or not.

Q Mrs. Johnson, there came a time when you were advised that they were going to operate on your right eye, is that correct?

A Right.

Q You were taken to the operating room?

A Right.

Q Did they do the same things for you prior to taking you to the operating room for the second eye that they did before they took you to the operating room for the first eye?

A Yes.

Q When you reached the operating room for the second operation, did everything seem to be proceeding exactly like it proceeded for the first operation?

A It began the same way, yes.

Q Then there came a time in the course of that operation when you say you heard a conversation?

A Yes.

Q And that was the voice of Dr. Knapp?

A Yes, it was.

Q And what did he say?

A He told the person who was with him that I had four young children, that I needed my eyes, and then they were working and then pretty soon he said, "Watch it, watch it, watch the cornea," and then there was, "Hmm," and dead silence, and then they mumbled and I couldn't understand what they said. It was too quiet.

Q Do you recall your deposition, your examination before trial, back in November of 1975?

A Yes.

MR. BEGOS: Mr. Rheingold, page 23, line 22. I'm sorry, Mr. Rheingold, page 22, line 11.

Q Do you ever recall saying that you heard Dr. Knapp tell her to watch out for that cornea?

A To tell who?

Q Tell her.

A No, I don't remember my exact words, sir.

Q Mrs. Johnson, when you were examined before trial, and I am referring to page 22, Mr. Rheingold, do you recall these questions and do you recall giving these answers, line 5:

"Q Did you have any conversation with anyone or did you hear anything, any talking?

"A I heard something.

"Q Do you recall what you heard?

"A During the operation?

"Q Yes.

"A I heard him tell her, watch out for that cornea, and then everything went silent, and then the operation was over."

Do you recall those questions and those answers back in November of 1975?

A Yes.

Q You specifically indicated, "Her," is that correct?

A I don't recall, sir.

Q Do you deny, Mrs. Johnson, that your answer was "I heard him tell her"?

A No, I don't. I don't know what to say because I don't know what you mean.

Q Was the person who was in the operating room the day that your second operation was performed a male or a female?

A I have no idea.

Q Is it correct, then, that the use of the word "Her" is inaccurate?

A I don't know whether it was a male or a female, sir.

Q You used the word "her" in answer to that question, did you not?

A If it is in there, I suppose I did.

Q Mrs. Johnson, after this examination, the questions and answers were typed up, and your attorney sent that examination to you for signature, did he not?

A Yes.

Q Either you or someone read those questions and answers, is that correct?

A My husband read them to me, yes.

Q After reading those questions and answers, you signed your examination, did you not?

A Yes, but he could have said "He".

Q And you swore that the answers you gave were

correct, is that not so?

A I assumed they were correct. Yes.

Q As a matter of fact, Mrs. Johnson, some questions and answers in this deposition that were inaccurate were corrected, is that not so?

A I don't know what you mean, sir.

MR. BEGOS: Mr. Rheingold, would you concede, in order to save the time of the Court and burden this witness, that there were five questions and five answers that were changed after this deposition was sent to Mrs. Johnson?

MR. RHEINGOLD: Yes, your Honor, we so concede.

Q And that in fact, Mrs. Johnson, in the very question or the very answer that we just read to you, one of the words was changed from "blank" to "silent," do you recall that?

A No, I don't recall it, sir.

MR. BEGOS: Do you concede that, Mr. Rheingold?

MR. RHEINGOLD: Yes, that is correct. Right.

Q Mrs. Johnson, did you discuss that conversation that you had or that you overheard in the operating room with your husband?

A Yes, I did.

Q When did you discuss it with him?

A The night after the operation and he came down to New York to see me.

Q What did you tell your husband?

A That I thought they made an error in my eye, and I told him what I heard.

Q Did your husband, to your knowledge, have any discussion with Dr. Knapp after that conversation with you?

A No. I don't think so.

Q Mrs. Johnson, in your direct examination you said that you knew something was wrong with your right eye.

A Yes.

Q How did you know something was wrong? Was it based upon that conversation?

A It felt different. I asked Dr. Knapp after the operation, I said, "My eye feels different than the other one," and he said, "They are both the same."

Q Was that on the night of the operation that you said that to Dr. Knapp?

A I am not sure, sir.

Q Did you ever make any complaint to anyone other than Dr. Knapp during the remainder of that hospitalization?

A No, I did not. I didn't see anybody.

Q Pardon me?

A I didn't see anybody else but Dr. Knapp and my

husband.

Q Mrs. Johnson, from time to time while you remained in the hospital after that second operation, you had seen nurses, did you not, or nurses came to you?

A Yes.

Q Did you make any complaints to any nurse?

A No.

Q Did they put a cone on that right eye?

A Yes.

Q After that operation?

A Yes.

Q Did you have any visual problems? Could you see through that cone?

A You can see light and dark and to maneuver a little bit.

Q Is it not a fact, Mrs. Johnson, that after you left the hospital, you were able to see out of that eye?

A Yes.

Q And you were able to see out of the other eye?

A Yes.

Q And that you had no difficulty in seeing until approximately January of 1973?

A I don't recall exactly when.

Q Do you recall that there came a time, Mrs. Johnson,

when you indicated that you felt fluid in your eyes or that you felt water in your eyes?

A Yes. I said there always seem to be tears in my eyes and I can't wipe them away.

Q Was that at or about the time that you began to have a change in the vision in your eyes?

A I am not sure whether that was in the beginning or in the middle, sir.

Q Certainly, Mrs. Johnson, it was after that fluid th you eventually were referred to Dr. Coleman, is that correct?

A Yes.

Q On the occasion that you were referred to Dr. Coleman, were you first examined by Dr. Knapp that day?

A Yes.

Q Did Dr. Knapp tell you that he wanted you to see Dr. Coleman?

A Yes. He said he wanted me to go down to Dr. Coleman.

Q Did he tell you why he wanted you to go to Dr. Coleman?

A No, he did not.

Q Did you go right down to Dr. Coleman's office?

A Yes. We walked down the hall to his office.

Q Dr. Coleman's office is located on the other end of that floor, is it not?

A I believe it is.

Q When you went to Dr. Coleman's office, did you have any conversation with him?

A No.

Q Did he have any discussion with you?

A Yes. He told me he was going to put a dye in my arm and it would turn me orange, and don't feel bad about looking like an orange person.

Q He did that on that occasion, is that correct?

A Yes, he did.

Q He looked into your eye?

A Yes, he did.

Q After he injected this dye?

A Yes, he did.

Q Did he say anything to you after he looked into your eye?

A Yes. He said, "You have some pinholes."

Q Pardon me?

A I had some pinholes. The fluid was coming --

Q Did he say what those pinholes were doing?

A They were letting fluid get into my eye.

Q Did he tell you where those pinholes were?

A No.

Q Did you have an understanding about the pinholes being in front of your eye or the back of your eye or didn't you know?

A I didn't know, sir.

THE COURT: I didn't understand where you said he put the dye in. Did he only put it in your eye?

THE WITNESS: No, he put it in my arm. He put a needle in.

THE COURT: You say it turned you orange.

Do you mean your whole body turned orange?

THE WITNESS: Yes. Orange glow.

Q Did your vision turn orangey?

A My vision?

Q Yes. Did you see orange?

A I don't think so, no.

Q You don't know?

A He said I would look orange.

Q After Dr. Coleman performed this test with you, he said that he had seen pinholes, is that correct?

A Yes.

Q Was your husband present when Dr. Coleman said this?

A Yes.

Q Did Dr. Coleman make any recommendation at that time for treatment?

A Yes, he did.

Q What recommendation did he make?

A He said that he would -- he said he would like to use a laser beam on my eye and that would seal up the leaks in it.

Q Did he tell you whether he was going to use the laser beam on one eye or both eyes?

A Both eyes.

Q Did he tell you when he was going to do this?

A Yes. The following week, I believe it was.

Q The following week?

A Yes.

Q Mrs. Johnson, after Dr. Coleman finished the test, did you go back to Dr. Knapp's office with your husband on that day and did Dr. Coleman go back to Dr. Knapp's office with you?

A No.

Q Do you have any recollection, Mrs. Johnson, of Dr. Knapp and Dr. Coleman talking to you together on that day?

A They never talked to me together. Dr. Knapp went off on vacation before then, and the laser beam was done

before I saw Dr. Knapp again.

Q Dr. Coleman then did the laser treatment on the following visit, is that correct?

A Yes.

Q Before he did the laser treatment on the following visit, did he also inject you again with the dye?

A That same -- when I went back to the office, yes.

Q Then after he injected you with the dye, the laser treatment was performed, is that correct?

A Yes. Right.

Q After that laser treatment was performed, you returned to Dr. Coleman's office the following week, is that not so?

A Yes.

Q Dr. Coleman examined you on the following week?

A Yes.

Q Did he say anything to you, if you recall, after he examined you?

A He said -- I believe he said that he thought it had helped and that I would be able to drive soon.

Q How did you feel? Was there any improvement in your vision in that eye? That is the left eye.

A I can't remember.

Q Did you continue to see Dr. Coleman on two

further occasions?

A I believe there was only one more.

Q One more?

A There was the laser beam treatment and then I went to visit him once more, I believe.

Q So according to the best of your recollection, you only have seen Dr. Coleman three times, correct?

A That's right, yes.

Q Mrs. Johnson, if Dr. Coleman's records indicated that he had seen you five times, would you disagree with that?

A I am not disagreeing with it. I just thought it was only three times.

Q Could it have been five times?

A It could have been, yes.

Q Did there come a time, Mrs. Johnson, when you again saw Dr. Knapp?

A Yes.

Q For how long did you remain under Dr. Knapp's care?

A I don't understand your question. Up until when --

Q What month did you stop seeing Dr. Knapp?

A May.

Q In May?

A Yes, the 24th, I believe was my last visit.

Q That is your best memory, is that not so?

A Yes.

Q If Dr. Knapp's records indicated that he saw you in July -- excuse me -- in June, would you disagree?

A I think May was my last visit.

Q Mrs. Johnson, at your last visit, did Dr. Knapp discuss your seeing Dr. DeVoe?

A Dr. Knapp never discussed anything with me.

MR. BEGOS: I ask that the answer --

THE WITNESS: Dr. DeVoe, no. I don't know any Dr. DeVoe. I don't know who he is.

MR. BEGOS: Your Honor, I ask that the witness' first response to the question be stricken.

THE COURT: It will be stricken. The jury will disregard it.

Q I believe you testified this morning, Mrs. Johnson, that you saw Dr. Sears in New Haven in July, is that correct?

A Yes.

Q Could it have been June?

A I said it was June. My husband said it was July.

Q Mrs. Johnson, if Dr. Sears' records reflected that you had a visit on June 27th to his office, would you

disagree with that?

A No.

Q If Dr. Knapp's records reflected that you last visited his office on June 11th, would you disagree with that?

A Yes.

Q You would?

A Yes.

Q On this last visit to Dr. Knapp, did you discuss with Dr. Knapp the possibility of corneal transplant?

A Yes. I asked him when he said the cornea was gone, I said, "Is there any way of having a corneal transplant," and he said, "No."

Q Where did you learn of corneal transplant? Who had suggested that or mentioned that to you or how did you --

A Nobody. I have heard of corneal transplant, and he said my cornea was damaged, and my cornea was all filled up with fluid and stuff. So I said, "Well, gee, is there any way you can replace it?"

And he said, "No."

Q Mrs. Johnson, on what occasion was it that Dr. Johnson -- excuse me -- that Dr. Knapp told you that your cornea was damaged?

A He didn't say it was damaged. He said there was

fluid in my cornea.

Q In your cornea?

A In my eye. I don't know how to word it. There was fluid in my eye --

Q Did he ever tell you there was fluid in the left eye?

A Yes. That is why I had the laser beam.

Q That eye was treated with the laser, is that not so?

A Yes.

Q That improved vision in that eye?

A Yes.

Q Was there any reason given to you why the other eye, the right eye, could not be treated in the same way?

A Yes. He said it wouldn't dilate, my pupil wouldn't dilate, so therefore I couldn't have it done.

MR. BEGOS: Page 39, Mr. Rheingold.

Q Mrs. Johnson, do you recall this question and answer at your examination:

"Q From the last time that you saw Dr. Coleman and Dr. Knapp, what month was that, approximately?

"A Approximately in March."

Do you recall that question and giving that answer to that question?

A That was when I saw Dr. Coleman, in March, and Dr. Sears -- excuse me. Would you repeat it, please?

Q "Q From the last time that you saw Dr. Coleman and Dr. Knapp, what month was that, approximately?

"A Approximately in March."

Do you recall giving that answer to that question?

A Yes.

Q And today you say that it was May, is that correct?

A It was May I saw Dr. Knapp at the end. That wasn't at the same time. The last visit to Dr. Knapp was in May.

Q On the first occasion that you saw Dr. Sears up at New Haven, did you say this morning that he took photographs and did a lot of tests on your eyes?

A Yes.

Q You have a positive recollection of photographs being taken on that first visit?

A No. I just remember I was there from 9:00 o'clock until 6:00 o'clock, and they did all kinds of testing. I don't know which tests they did on what day. I can't recall.

Q On that first occasion that you presented yourself to Dr. Sears, did he on that occasion suggest a corneal transplant?

A Yes, he did.

Q Did he make arrangements on that occasion for the eventual corneal transplant?

A No, he did not. He told me to think about it.

Q When did you, after thinking about it, decide to have it done?

A Sometime in August, I believe.

Q It was then that you told him that you would go ahead, is that correct?

A I believe so, yes.

Q And then you had to wait until January?

A To January.

Q Do you ever recall Dr. Sears telling you that they had to try to reduce the pressure in your eyes before they could consider a corneal transplant?

A I don't know whether he used those words. I know they were treating my pressure.

Q Did they test your pressure, if you recall, on the first visit that you saw Dr. Sears?

A I believe they tested it on every visit.

Q Do you have any recollection, Mrs. Johnson, of when for the first time Dr. Sears rendered any treatment to your left eye?

A To my left eye?

Q That is the eye that Dr. Coleman used the laser

on.

A They checked it out, but I don't know what you mean by treatment.

Q Did there come a time when Dr. Sears did something for your left eye?

A The only thing I remember them doing is putting the contact lens in now.

Q Do you have any recollection of when that was?

A Yes, that was this fall.

Q Do you recall the term soft contact lens?

A Yes.

Q Is that what he applied to your eye?

A Yes.

Q That soft contact lens, has that changed your vision in any way in that eye?

A No.

Q Has Dr. Sears --

A I shouldn't say it didn't change it. It changed the fluid in it. It isn't as hazy in it as it was.

Q But aside from the treatment that Dr. Coleman rendered to that left eye at Columbia in 1973, has any treatment been rendered to that left eye other than the contact lens, to your knowledge?

A There may have been some drops put in from time

to time, but I don't recall.

Q Has Dr. Sears suggested any operation for that left eye?

A No, he has not.

Q Has he referred you to any other doctor for an examination of the left eye?

A No.

Q Have you ever asked Dr. Sears whether anything can be done for your left eye?

A I can't recall. I believe that at the first visit he said there was nothing that could be done, the first time I saw him, so I never questioned him much on it since.

Q And he has never brought it back up again, is that correct?

A No, he hasn't brought it back up.

MR. BEGOS: Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. RHEINGOLD:

Q Your sister came up in the cross examination, Mrs. Johnson.

What was her name again?

A I have four sisters.

Q The one that had a cataract operation.

A Mrs. Mezzanotte.

Q Has she had cataract operations on both her eyes?

A Yes, she has.

Q Could you tell me what space was involved between the two eyes?

A There was approximately nine to ten years between the two different eyes.

Q One other question, Mrs. Johnson. You described again during Mr. Begos' questioning about what you heard during the second operation Dr. Knapp saying. I believe you added something you didn't say on direct before. In addition to "Watch the cornea," and about your having four children, there was some sort of expression you made. What was that?

A That was the doctor saying, you know, moving his lips, I can't move his lips, but he made a sound as if a disgusted type of sound.

Q Did that come after he made the statement, "Watch the cornea"?

A Yes.

MR. RHEINGOLD: That is all, your Honor.

THE COURT: Thank you.

MR. RHEINGOLD: With your Honor's indulgence, I would like to ask the witness as she comes down to stand in front of the jury --

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

ANNA R. JOHNSON, and ROBERT K. JOHNSON,

Plaintiffs,

- against -

74 Civ. 5437

PHILLIP KNAPP, and D. JACKSON COLEMAN,

Defendants.

- -x

B e f o r e:

HONORABLE WILLIAM C. CONNER,

District Judge,
and a Jury.

April 27, 1976

TESTIMONY OF DR. IRVING PLAIN

2 lhas 78

(In open court, jury present)

MR. RHEINGOLD: Your Honor, at this time I'd like to call Dr. Irving **Plain.**

I R V I N G **P L A I N,** called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RHEINGOLD:

Q Dr. **Plain**, what profession do you engage in?

A I am a doctor of medicine specializing in disease and eye surgery.

Q Is that ophthalmology?

A Ophthalmology is correct.

Q Do you confine your practice to ophthalmology?

A Yes, sir.

Q When were you admitted to practice and in what state?

A 1933, New Jersey.

Q Are you certified by any American board?

A Yes. I am a diplomate of the American Board of Ophthalmology.

Q What does that entail, being a diplomate?

A That means if a doctor has the proper training, he is admitted to examinations, both oral, written and

practical, and if he passes these examinations, he is given a certificate as a certified ophthalmologist.

Q In addition to the American Board of Ophthalmology, sir, are you a member of any other organizations in the field of ophthalmology?

A You mean societies, and things like that?

Q Yes.

A Yes. I am a member of the Wills Eye Hospital Society, the New Jersey Society of Ophthalmology and Otolarynology, and the various usual medical societies.

Q Are you a member of the state, county and national medical associations?

A Yes.

Q Dr. Plain, do you practice cataract surgery?

A That's among -- that's included in my work in ocular surgery.

Q Have you over the years performed a number of lens extractions?

A Yes, sir.

Q Could you tell the jury and his Honor about how many you have performed?

A I don't keep an exact count, but I think it is safe to say in the neighborhood of hundreds, or more.

Q Among those, Doctor, have you performed some

using the freezing technique?

A Yes. Almost routinely at this time.

Q Do you have any hospital associations, Doctor, at the present time?

A Yes.

Q Could you tell us what those are, please?

A I am the consulting eye surgeon to the Saint James Hospital, New Washington, New Jersey; consulting eye surgeon to the Riverside Hospital, Boonton, New Jersey; I am senior attending opthalmologist at the New Washington Beth Isreal Medical Center; I have up until recently been opthalmologist of the New Washington City Health Department.

Q Dr. **Plain**, do you at present have any governmental positions or appointments?

A Yes. I am assistant clinical professor of opthalmology at the New Jersey College of Medicine and Dentistry, I am also medical referee for the Department of Health, Education and Welfare in connection with eye disabilities, and this includes the State of New Jersey and a large portion of the State of New York.

Q If I may interrupt you for a minute, has this last position that you are involved in involved you in passing on the treatment which is given by New York doctors?

A Among other things, yes, since it is in New York

it includes New York physicians.

Q Does that include Manhattan, by the way?

A Manhattan and Brooklyn.

Q Do you have any governmental posts, Dr. Plain?

A For many years I was examiner of eye disabilities for the New Jersey Department of Labor.

Q Anything else, sir?

A Well, yes, but I don't think it enters here.

Q Dr. Plain, I feel that you do have a position with New Jersey, as I understand it, and I'd like you to tell us what it is.

A I am a member of the State Board of Medical Examiners of the State of New Jersey.

Q Could you tell us, Doctor, just briefly, I don't want to go into too much detail, what are your responsibilities as a member of the State Board of Medical Examiners?

A To examine and license new physicians and also to regulate the practice of medicine and surgery in my state and to discipline any aberrant members and at time either revoke or suspend their licenses for misconduct.

Q How many physicians are on this board, Mr. Plain?

A Nine.

Q Based on your experience over the years, Doctor, do you know or are you familiar with the standard of

care given by ophthalmologists in the New York Metropolitan Area, and let's confine ourselves to 1972?

A Yes, sir.

MR. BEGOS: Objection. There is no foundation.

THE COURT: Overruled.

Q Dr. Plane, at my request have you looked at various records relating to a patient named Anna Johnson?

A Yes, sir.

Q In addition, sir, have you had occasion to testify in various types of cases before coming here today?

A You mean in my past?

Q Yes.

A Yes, I have.

Q Has that included medical malpractice cases?

A Yes.

Q Have you testified on both sides, for the plaintiff and for the defendant?

A I would say 90 percent of the time -- and, please, I don't go to court every week, understand -- 90 percent of the time it has been in the defense of doctors who are being sued for malpractice.

Q Could you tell the jury, going back let's say to 1972 in the New York Metropolitan Area, what were the indications for performing a lens extraction when there was

a cataract on that lens?

A A cataract would be removed from an eye or eyes if the cataract was large enough and sufficiently dense to disturb the vision of that individual, to disturb it enough so that the individual could not function normally with his eyes, and this would keep him from doing normal, average things during his life at that time.

Q Is the criterion what the doctor sees in the eye or what the patient reports to the doctor?

A It is what the patient reports on reading the Snellen chart. Very often a doctor can look at an eye and say "This is a cataract." But, nevertheless, the patient can see quite normally, and this is not a candidate for surgery.

Q How do you determine what the patient's vision is in terms of the patient's own seeing?

A There are standars tests. One uses the Snellen chart with standard letters, which are the same all over the world, and the patient at a distance of feet away from the chart reads as much of the chart as he can, both without his glasses and then with his glasses. This gives us the degree of his vision.

Q Is there a certain loss of vision which is required, Doctor, in good practice before a lens extraction

is done?

A Of course.

Q Is there some point below which --

MR. BEGOS: Objection to the leading of the witness.

MR. RHEINGOLD: I will withdraw the question, if I might.

Q What was the name of that chart that you described?

A Snellen.

Q I would hand you this chart, Doctor, and ask you if you could identify what type of chart it is?

A This appears to be the usual and accepted Snellen chart figures.

Q Will it be helpful to you, Doctor, in testifying about what, for example, 20-20 vision is or 20-30 vision is to utilize this chart in your testimony?

A Yes. It would let me demonstrate what different degrees of vision are.

MR. RHEINGOLD: Your Honor, I would offer this I think probably as demonstrative evidence, for identification only, or I will offer it into evidence.

MR. BEGOS: I have no objection.

(Plaintiffs' Exhibit 6 received in evidence.)

Q Dr. Plane, when we say 20-20 vision, what does that mean?

A 20-20 is the accepted normal vision. 20-20 means that this eye has what we consider normal vision.

Q What do the numbers mean, "20"?

A 20 over 20 means that the patient is able to read at a distance of 20 feet from his eye, at a distance of 20 feet from his eye, the indicated figures under the 20-20 there. In other words, he is seeing what he should see at that distance.

Q On this chart is there an indication of which line on the chart is this 20-20 vision?

A The chart with the red bar underneath it is 20-20 vision.

Q Is that so indicated in the left-hand margin here?

A It is. It says 20 over 20.

Q Reading up in this left-hand margin, what various acuities are given there?

A The one above the red bar line, the F E L, and so forth, is 20 over 25. It means just a fraction away from normal 20 over 20. It is of no significance. You can drive an airplane with it.

Q What is above that, Doctor?

A Above that over the green line it is 20 over 30, E D F C Z P. This is juse one line. I don't consider 20 over 25 of any clinical significance, because it is neither bad nor good insofar as 20 over 20 is concerned. It is one line less than the normal 20 over 20. This means that at 20 feet he is able to read what he actually should be able to read 30 feet away.

Q Going above 20-30, Dr. Plain, would you just read us without comment what the next --

A There is the next line, loss of vision, 20 over 40. Then there is 20 over 50, 20 over 70, 20 over 100, up to the big E, which is 20 over 200.

Q Doctor, have I asked you to look at some office records of Dr. Knapp relating to Anna Johnson? I show you what has been marked as Plaintiffs' Exhibit 2 in evidence, Dr. Plain. I will ask you to assume that those are the office records of Dr. Knapp already in evidence. I turn your attention first of all, sir, to the readings on the date of 9/18/72. I will have you assume that those are readings made a month and a half -- a little over a month before her actual cataract extractions which were performed in both eyes of my client. Could you tell us with regard to the right eye what the readings were in that eye at that time?

A On this date the vision in the right eye without eyeglasses was 20 over 60 plus 1, meaning the patient could read the 20-60 line with one more letter which appears on the 20 over 50 line.

Q Dr. Plain, when you say without eyeglasses, you mean just the vision --

A The naked eye.

Q Uncorrected?

A The naked eye.

Q Would you continue as to the right eye?

A Below there is another notation concerning the right eye stating with a plus .75 lens -- lenses are measured in what we call diopters. Therefore, this was a weak lense which only measured .75 or 3/4 of a measurement unit, the diopter, indicating a weak lense. It said here that with this weak lens the vision was 20 over 30 minus. 20 over 30 minus means that the patient reads one line less than normal, possibly skipping a letter or two. That's what the minus means.

Q Minus means that one or more of the letters were incorrect?

A That's right. Not more than one or two.

Q Is there a further reading on the right eye, Doctor?

A Also the reading glass part, people after forty need help with which to read. That's normal for people of this age. This patient with a reading glass reads 20 over 30 minus, meaning the small print is just one line less than one would normally expect in reading.

Q If I could stop you there, Doctor, in going back to this Snellen chart, which is marked Plaintiffs' Exhibit 6 in evidence, I am going to hold this here, Doctor, and I will represent to the Court that this distance where I have it set here is approximately 20 feet from the jury box, and I can't say exactly, your Honor, because there are, of course, two rows of jurors, but, Dr. Plane, I want you to assume this is exactly 20 feet, but really approximately 20 feet, I will point out the 20-20 chart. That's the one above the red line, is that correct?

A Yes.

Q The 20-30 chart is the one above the green line, is that correct?

A Yes.

Q Are those the letters which Mrs. Johnson could read according to your interpretation of Dr. Knapp's records?

A For her distance vision, yes, but there is no provision for a reading test on this particular chart.

Q How is the reading test performed?

A That's performed on a card or a chart which has much smaller fine print, smaller than newspaper print.

Q Is that held close to the eye?

A It would be -- this near vision would be tested a foot or so away from the eye, because this is the position in which we read.

Q According to your interpretation, then, Dr. Plane, two tests were made with corrective lenses on Mrs. Johnson's eyes, and in both she read 20-30, both the close reading and the distance reading?

A Yes.

Q Doctor, in handwriting on that chart that you have in front of you, Plaintiffs' Exhibit 2, and I will have you assume that's Dr. Knapp's handwriting, it says "with lights down." Do you see that?

A I do.

Q After which reading is that, the distance or the close reading?

A This is after the reading of the right eye with a weak eyeglass on it.

Q What is the significance of that term "with lights down," Dr. Plane?

A It is of no great significance. It might mean that -- that I assume means a dim light, and one would

expect that in a bright light the patient would see even better.

MR. BEGOS: I object, your Honor, and move to strike the assumption of the witness.

THE COURT: Since it isn't clear exactly what the reporter means, I think I will have to grant the motion. The jury will disregard the witness' assumptions, unless and until it is established what the record means.

Q Dr. Plane, when you are measuring this corrected vision in reading this chart at a distance, is there a procedure both where you use normal room light and another procedure where the lights are down?

A Yes. You want to test this patient's vision under the daily circumstances which he is involved in. Therefore, you test him in a lighted room rather than a darkened room, because very few people walk about in darkened rooms.

Q If you tested a person --

MR. BEGOS: I again object. He is including as to what Dr. Knapp did on this particular occasion of this test, and the best evidence of that is Dr. Knapp's --

THE COURT: I don't believe that is this question. You may finish the question.

Q Would you expect to get, Doctor, with a reason-

able degree of medical certainty, a poorer reading for someone with the lights down as compared with the lights on?

THE COURT: Don't use that expression "lights down."

Q In a dark room, Dr. **Plain** -- thank you, your Honor -- as compared to a room with regular lighting.

A I think that's common sense. With proper light and not dim light, one does see better.

Q Are there also readings on that sheet that you have in front of you, Plaintiffs' Exhibit 2, relating to Mrs. Johnson's left eye?

A Yes, sir.

Q What was the finding in that eye, first of all, before any corrective lenses were applied?

A 20 over 400. 20 over 400, which is very poor -- very, very poor vision.

Q Was there any change upon correction with lenses?

A With a corrective lens -- wait a minute, no. It says less than 20 over 400 without glasses, and with a corrective glass over the left eye, it was 20 over 400.

Q Is that an even poorer reading than in the chart that we have over on the board there?

A Oh, yes, yes, it is.

Q Dr. **Plain**, are there also on the chart in front

of you the readings that Dr. Knapp made on Mrs. Johnson's right eye, the one that had the 20-30 vision as you described it for previous times that she was examined?

A Yes. Three other occasions.

Q On the occasion just preceding the 1972 one, I believe it was also in September, 1971 -- is that correct?

A Yes.

Q What was her correctable vision in her right eye at that time?

A The correctable vision in the right eye was 20 over 25.

Q And in the time preceding that, that was in 1970, what was her vision?

A November 18, 1970, the corrected vision was -- wait a minute. The uncorrected vision was 20 over 25 minus, and with correction the statement is "no help."

Q It remained 20 over 25 minus?

A Yes.

Q On the time of the original examination of Mrs. Johnson in early 1970, what was her reading?

A June 19, 1970, without glasses, the vision was 20 over 25, and there is an equals sign after that. I don't know what is meant by it, whether it means minus or what, but with the corrective lens it is 20 over 25 with the same

equals sign after it.

Q Then, Dr. **Plain**, from the first time that Mrs. Johnson saw the doctor in 1970 do you know until the last examination in September, 1972 before she went in the hospital, what had happened to the corrected vision in her right eye?

A From '70 to '72 there was no great change in the vision of the right eye. It went from 20 over 25 to 20 over 30 minus in 1972.

Q Now let's take, Dr. **Plain**, a woman, a housewife, age forty, who has in one eye vision of 20 over 30 minus, the reading that you have for September, 1972. Is that useful vision?

A Highly useful vision. Highly useful vision.

Q What can a person do functionally with that type of vision?

A Darn near everything he can do with 20 over 20.

Q Could you drive a car?

A Oh, indeed.

Q Could you read?

A Indeed.

Q Could you sew and do housework?

A Yes.

Q Dr. **Plain**, I am going to ask you a hypothetical

question. I want you to assume certain facts that you don't know personally but we would have you assume. I want you to assume a forty-year-old woman --

A May I have something to write on, please?

Q I'd like you to assume a forty-year-old woman who is a housewife by occupation, who has four young children, whose vision in her two eyes is as you have read it on the chart of Dr. Knapp as of September, 1972, that is in one eye there is a 20-400 vision, in fact lower than 20-400 uncorrected, in the right eye the vision uncorrected is 20-60 plus and it is correctable to 20-30 minus, as Dr. Knapp has stated there, and I want you to assume that in both eyes the ophthalmologist examining the eyes has seen cataracts in the lenses, and in both lenses these are posterior subcapsular cataracts. I want you to assume further, Doctor, that the patient, this forty-year-old hypothetical woman, has stated to the doctor that out of the left eye, the one with the 20-400 vision, she can't see anything and out of the 20 -- out of the other eye which has the 20-30 minus vision, that she is able to see, able to read, able to drive, in fact is actively driving and reading at the time that this test is done. Do you have an opinion, Doctor, based upon those set of facts and your experience, to a reasonable degree of medical certainty,

based upon the practice existing in the New York Metropolitan Area in 1972, whether it was proper to remove the lens in that eye, the right eye, which had the 20-30 minus vision?

MR. BEGOS: Objection.

THE COURT: On what ground?

MR. BEGOS: First of all, your Honor, it incorporates facts not in evidence and not necessarily correct and, secondly --

THE COURT: What fact not in evidence?

MR. BEGOS: He said -- the hypothetical presupposes or states that the witness has told the doctor that she is able to see, read and drive. I believe there is no such testimony.

MR. RHEINGOLD: You are right, I am sorry, that's true.

Q Could I amend that, Dr. Plain -- that was true -- that the woman has testified, not that she told the doctor, but that this was true, has testified from the stand that she could see to read and drive out of her right eye, and I make no statement to you about what it was that she stated to the physician about it. Just yes or no. Do you have an opinion as to whether in this situation it was to a reasonable degree of medical certainty proper to remove the lens in that eye?

A I have an opinion.

Q What is your opinion, Doctor?

A It is a very strong opinion, I might say --

MR. BEGOS: Your Honor, I object and move to strike the gratuitous comments of the witness with respect to the degree of opinion or otherwise.

MR. RHEINGOLD: It is just a way of speaking, your Honor.

THE COURT: Overruled.

A (Continuing) Whether it be New York or Timbuktu or New Jersey, or any other locality, removing a cataract from an eye with this type of vision is most firmly, in my opinion, not necessary, because we have an eye that sees one line less than normal and because the vision in this right eye at this time is adequate to almost any ordinary household task, or even employment task. I can see no reason for surgery of this type in this kind of eye.

Q Doctor, would you say that performance of cataract surgery in this type of eye, that is one with 20-30 minus correctable vision, was a departure from the standard of care which existed in the New York Metropolitan Area in 1972?

A From the standard of care and probably also disregard of human consideration.

MR. BEGOS: Objection and move to strike the response of the witness, your Honor.

THE COURT: Sustained. The jury will disregard the statement about disregard of human consideration.

MR. RHEINGOLD: Can I pose the question again, your Honor, and get an answer?

Q Can you answer yes or no, Dr. Plain, whether it was a departure from the standard of care?

A In my opinion it was.

Q Doctor, are we dealing at all here with an area of judgment as far as whether or not the lens should be removed from this eye?

A No. I don't think this is in an area of judgment.

Q If a person has a cataract in one eye which obviously calls for a cataract extraction, let's say a 20-400 eye, and the other eye has 20-30 vision, is there any reason that both eyes should be operated on during the same hospitalization?

A There is absolutely no valid reason.

Q Was there a standard of care in 1972 which would have involved just performing a cataract extraction on the bad eye and not on the good eye?

A That was the standard of care then, and it will

be the standard of care forever.

Q Why do you say that, Dr. Plain?

A Because one does not operate on an eye with 20 over 30 minus.

Q Doctor, can you adjust a person's vision so that if you operate on one eye and you don't operate on the other, they can still have usable vision?

A Yes.

Q Could you describe what procedures would be utilized?

A You see, if a cataract is removed from an eye, you are taking the lens out. The lens is where the cataract is situated. The lens does the focusing for you. It adjusts the eye to far and it adjusts the eye to near. But this lens is now removed. So you have to replace it with a strong lens over the operated eye, and as a rule the vision comes to normal. But, better still, in order to avoid double vision, we place a contact lens over the operated eye and the patient is able to use his both eyes in a completely normal fashion.

Q Doctor, taking again this hypothetical one, if there had been a cataract extraction in her left eye because of the 20-400 vision, is that the eye in which you say you then put a contact lens?

A Yes, because it would make the images of the operated eye equal to the images of the normal eye, and the patient wouldn't see double. It is a prime indication to use a contact lens.

Q And is this procedure which you have just described one which was in use in 1972?

A Yes, sir.

Q Doctor, if you were to operate on the left eye alone and there was a bad result, let's say for some untoward reason the person went blind in the left eye, what would that indicate as to the vision the person would have in the right eye if there was no operation?

A Well, even if the left eye was a complete failure, one still wouldn't go to the right eye because the vision is practically normal.

Q Is there any indication, Doctor, that if something does go wrong in the left eye after the operation, let's say cystoid macular edema develops --

A Indeed, there is. You are put on notice. You are alerted to the fact that what went wrong in one eye might possibly or probably go wrong in the other eye. You are on alert.

Q Is that one of the reasons, Doctor, for deferring an operation on the second eye?

A It is a very good reason, yes.

MR. BEGOS: Your Honor, I am going to object to leading the witness.

THE COURT: Yes, I sustain the objection. The jury will disregard the question and the partial answer.

MR. BEGOS: Your Honor, my objection really is, there have been several leading questions that I have

refrained from objecting to because I don't want to get up at each leading and suggestive question. May he be instructed not to lead the witness.

THE COURT: I think you understand.

MR. RHEINGOLD: I will attempt to, your Honor.

Q What are the reasons, Dr. Plain, for deferring surgery on the better of the two eyes where there are opacities in both eyes, if any?

A You would like to see how the first operated eye reacts to the surgery. If there is an untoward reaction, that is a bad reaction in healing or hemmorage, or what not, then you are guided as to what might happen in the opposite eye.

Q In what way are you guided?

A Well, in specific or in general?

Q Let's say in general.

A You keep your hands off the opposite eye until you are awfully, awfully sure that you have safeguarded this eye from any possible complication as found in the opposite eye.

Q If something untoward develops in the eye, let's say the left eye in this case, and you have a hemmorage or macular edema, is there any medical expectation that the disease that's created and the untoward event will

automatically spread over to the other eye?

A Not automatically spread over, but one should suspect that this could happen in the opposite eye too.

Q At a time when the second extraction is performed?

A Yes.

Q I didn't make my question clear. Assuming that in Mrs. Johnson's case there was only an operation on her left eye and whatever did develop in her eye did develop, I want you to assume there was cystoid macular edema that developed in her left eye, but there was no surgery, Dr. Plain, to the right eye. Would that condition, cystoid macular edema, develop in and of itself in the right eye?

A No. Cystoid macular edema here follows cataract surgery, and since there would be none in the right eye we wouldn't get a cystoid macular degeneration, because this condition -- I am finished.

Q Was there any standard of care back in 1972 in the New York Metropolitan area that when you are putting a patient in the hospital, such as this hypothetical woman, and you were going to do her left eye, her bad eye, anyway, that you would necessarily do the right eye, let's say a week later but during the same hospitalization?

MR. BEGOS: I object to the form of that question, your Honor.

THE COURT: Sustained.

Q Dr. Plain, just because you have a patient in the hospital and you are operating on a cataract in one eye, is there any medical reason for performing a cataract extraction on the other eye if the vision is 20-30 minus?

THE COURT: You mean during the same hospitalization?

MR. RHEINGOLD: During the same hospitalization and let's say a week apart.

A Absolutely not, and I'd like to explain.

Q Please do.

A The fact that you have a patient flat or his bed in a hospital doesn't mean you have to go and do more surgery just because you have the patient there. I see no purpose, just because the patient is in the hospital, to do another eye with practically normal vision.

Q Thank you, Doctor. Doctor, I'd like to ask you some questions about the area of what it is that is known as far as risks, which are associated with lens extractions. Are there certain conditions which -- they don't always occur -- but which are known on occasion to occur after there has been lens surgery in the eye?

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MR. BEGOS: Objection. May we approach the bench, your Honor?

(At the side bar.)

MR. BEGOS: The specific purpose for my objection is based upon Canterbury against Benz, District Court, Washington, D.C., Gerrone, Appellate Division First Department, which I have cited in my brief and second department and third department case in New York, with respect to exper testimony in regard to risk; I assume that this is the area that he wishes to explore.

MR. RHEINGOLD: That is correct.

MR. BEGOS: The informed consent area. I object to informed consent coming in to this case as it is not in the complaint and no where in the interrogatories. Risks, according to Canterbury, which New York has adopted, are not to be put to the jury by experts. They are for the jury to determine.

MR. RHEINGOLD: Your Honor, the three cases mentioned by counsel all state that under the modern rule it is no longer necessary to present expert testimony. None of them say that expert testimony may not be presented. In fact, in order to guide the jury as to what were the known risks which should have been passed on, it is visible in this case for me to present expert testimony

on that issue. Finally, as to Mr. Begos' argument that we didn't plead informed consent, I believe that the following is an accurate statement of what was done off the record, that we conceded we didn't plead it, but we said that the recent case make quite clear that it is a negligence rather than an assault cause of action, and that we did in our complaint plead negligence and we did in response to a request in interrogatories to give the details of it stating that one of the elements of negligence was a failure to obtain an informed consent.

THE COURT: I am going to overrule the objection.

(In open court.)

Q Were there certain known risks connected with lens extractions in 1972?

A Yes, sir.

Q Could you tell us what those were? At least the main one.

A Cataract surgery is undoubtedly the most delicate type of surgery and of a major nature, because when one opens up the eye, and in this surgery one does slice the front part of the eye and one gets into the eye with instruments and cuts off a piece of the iris and then removes the lens -- this eye is about the consistency of a grape, or less, with fluids inside of it that hold the

eye in shape and nourish the eye. Whenever you open an eyeball up, you can get many disasters and complications, but you don't always get them, of course. Not every cataract surgery case turns out disastrously. After you open the eye and take the lens out with whatever method you use, you then have to sew the eye up again. This something is done with stitches which are as fine as one of the hairs on your head.

As a rule it has to be done under considerable magnification. Some men even use operating microscopes. So you see, you have a most delicate and sensitive procedure here. Many complications can occur, and fortunately they don't always occur. I jotted down some of them.

One of the complications can be infection within the eye, and in spite of all of our great antibiotics, if you get an infection inside the eyeball, that's a lost eye because the jelly of the eye is a perfect medium on which to grow bacteria. They love it, and they get in there and they just keep piling up, and that finishes the eye. So infection is one of the complications.

Another complication could be breaking open of the wound during the healing period. As I told you, the stitches used to close the eye are very, very delicate. They are tough, but they break with a fast movement of the

eye or pressure on the eye. That means the patient is taken back and the eye is sewed up again. Not so good.

Another complication which happens on the operating room table may be once in every 10,000 cases is what is called an explosive hemorrhage of the eye. You are working on the eye, then all of a sudden there is a gush of blood, the blood comes out, and it carries out the retina and other vital parts of the eye. For this you can do nothing. That is one of the complications.

Another complication is post-operative inflammation. Please remember, this delicate little eyeball has been handled inside and outside. This inflammation can give rise to glaucoma, which is hardening of the eyeball. Sometimes it is controlled by drops, sometimes an operation for glaucoma must be done.

Another complication would be death of the optic nerve, optic atrophy. We don't know why, but after every so many operations, the optic nerve goes dead. The eye looks beautiful, you examine it, and you feel it should see, the eye should see with a cataract glass, but you look in and you find the nerve is dead, whereas a week prior to operation it was healthy and alive. That's another complication.

Another complication is degeneration of the macula.

It has been mentioned here. The macula is a tiny part way at the back of the eyeball, and this part is the part that sees fine things for you. You read through the macula part, you see colors through the macula part, and practically all of your central straight ahead vision comes through the macula. For some reason the macula can degenerate following cataract surgery --

Q Dr. Plain, excuse me for interrupting. Are you describing cystoid macular edema?

A Yes, yes, the same, different name, but the same result, the same condition. For this we can do nothing. There is no medicine, there is no surgery. Once the macula goes, your vision goes.

Then there are also some cases where, in spite of the closing of the wound very tightly, the wound begins to leak and the front part of the eyeball sort of collapses. The patient loses what we call the anterior chamber. That's another complication.

I believe I mentioned infection. There is also another possible complication, bullous keratopathy.

Q Could you define that, Dr. Plain?

A Yes. This is a very disastrous condition. It means that the back of the cornea -- you know, the cornea is the window of the eye. It is the clear tissue

at the center of the eye. It is the window. You look out through the cornea. The cornea is very delicate. It measures approximately 2 millimeters, which is a very small measurement of width. It has a front surface, it has a back surface. As a matter of fact, it has four layers. But, if the back surface -- the back surface of the cornea, which is called the endothelium is touched by an instrument, that's disaster, because if you break this endothelial layer, no matter how slightly, the fluids of the eye go through this break and get through the whole cornea until they reach the outside and they cause bulle, A simpler name for bulle is blisters.

Another cause of bullous keratopathy is in following cataract surgery, because the barrier, the shield is broken inside, the jelly of the eye, the internal jelly of the eye, comes forward and touches the back of the cornea. We have a name for this. This is the vitreous touch syndrome. This too causes severe bullous keratopathy, which causes pain, irritation and loss of vision. That is another dreaded complication.

There are also complications following anesthetics used in this procedure.

Q Are those the general risks of surgery, Doctor?

A The general risk of surgery in any type of

surgery, whether it is the big toe or the eye, anesthetics always bring an element of risk with them.

Q Are there some other general risks of eye surgery? Have you given us the main risks?

A I gave you the main ones.

Q Dr. Plain, do you have an opinion based on a reasonable degree of medical certainty, as to what good and proper practice was in 1972 in the New York Metropolitan area as far as an ophthalmologist who is going to perform a lens extraction on a patient telling that patient about what risks are involved with the performance of that treatment?

MR. BEGOS: Objection, your Honor, the same basis as expressed at the side bar.

(At the side bar.)

MR. BEGOS: In this respect, your Honor, I might add the cases are not silent and indicate that an expert opinion testimony is not necessary with respect to --

THE COURT: Not necessary, but not necessarily improper. That's the question.

MR. BEGOS: I think it fringes pretty close to that. When you read the Canterbury decision, it comes pretty close. The court there indicated that they didn't care what the standard in the community was or wasn't, that

it was for the jury to decide what should and what should not be given to a particular patient for a reasonable informed consent, which was an issue of fact for the jury to determine.

THE COURT: I can't imagine that a surgeon would really go into all this detail with a patient.

MR. RHEINGOLD: I hope not.

THE COURT: The patient would be scared to death.

MR. RHEINGOLD: But I think he is going to say that they would outline in general that there are certain serious epcfic risks.

THE COURT: I will permit the question, although I have misgivings about it.

MR. BEGOS: Exception, your Honor.

MR. RHEINGOLD: Can we talk off the record, your Honor, or should I not do that?

THE COURT: That's up to counsel.

MR. RHEINGOLD: I will stay on the record. I don't want to create any error, and certainly the law that Mr. Begos is now saying is the law makes it quite clear it is not necessary, and obviously I could intentionally avoid error, if that is going to be the law that's applied to this case by not asking this question.

It is also conceivable that the New York Court

of Appeals some day will hold that it doesn't follow Canterbury, and therefore I want to have some expert evidence in the case to -- in case that is a requirement.

MR. BEGOS: I might add in fairness to you, the Court of Appelas has ruled in this area in Ferrantino against Wenker, which is cited in my papers, and they took the position in the only case before it that expert testimony was necessary.

MR. RHEINGOLD: That's correct. The Court of Appeals the last time it spoke --

MR. BEGOS: The Appellate Division has very obviously decided not to follow the Court of Appeals.

MR. RHEINGOLD: I am trying to cover both laws in getting expert testimony on informed consent.

THE COURT: Up until now nobody has ruled that it is improper to have it. As I understand, you both agree that that is correct?

MR. BEGOS: Yes.

MR. RHEINGOLD: Yes.

THE COURT: I will permit it.

MR. BEGOS: Exception, your Honor.

(In open court.)

(Record read.)

A Yes.

Q Would you tell us what your opinion is?

A There has been a standard before '72 and after '72 and at present, that one discuss the surgery with the patient and tells him what to expect and what not to expect and what some of the hazards could be.

Q When you say "what some of the hazards could be," what do you mean?

A I mean you just don't sit there and frighten that patient to death and tell him he may die on the table due to anesthetic. You don't tell him the absurd things. You do tell him things that could happen in such an operation, and then give him his choice as to whether he cares to go through with it.

Q Would that be the more so where the eye to be operated on had 20-30 minus vision in it?

MR. BEGOS: I object to leading the witness in this respect.

THE COURT: I sustain that objection. Rephrase the question.

MR. RHEINGOLD: Withdrawn.

Q Would it have been proper in your opinion in 1972 for an ophthalmologist to have said in words or substance to a patient on whom there was going to be this operation "Don't worry, it's minor surgery."

MR. BEGOS: I object.

THE COURT: Sustained.

Q Is cataract surgery for the removal of a lens minor surgery, Doctor?

MR. BEGOS: I object to leading the witness, your Honor. The witness has already answered that question, your Honor. I believe my recollection of his testimony is that it was major surgery.

THE COURT: I don't believe the expression minor surgery, as such, was used, according to my notes. I am going to sustain the objection.

Q Would you categorize lens extraction as to what type of surgery it is, Dr. Plain?

A It is highly sensitive and major surgery -- highly.

Q Whose choise is it, the patient's or the doctor's, as to the performance of a lens extraction?

A The patient must agree to it.

Q On what information does the patient make up his or her mind?

MR. BEGOS: Objection, your Honor. That's a conclusion and usurping in this particular case the province of the jury.

THE COURT: Sustained.

Q Dr. Plain, you described a condition in the back of the cornea which I believe you said was due to touching of an instrument, is that correct?

A I said either the touching of this party by an instrument or by -- the other way, by a protrusion of the jelly of the eye hitting the back of the cornea.

Q When it happens that an instrument touches it, would that instrument include a cryoprobe?

A Any instrument, including the cryoprobe.

Q Would you define for us what a cryoprobe is?

A Cryo means cold. There is an instrument possibly the shape and the size of my pencil. One end of this instrument is attached to a tube which leads to a cooling unit, usually liquid nitrogen gas or any other gas that is liquified. The other end of the probe has a tiny tip on it, and when the instrument is put into operation, this tip freezes. It goes to a very low degree of temperature. The instrument is inserted in the eye, touching the front part of the lens. You press the pedal or whatever you do to get this moving and you actually see the tip of this instrument freeze to the lens. It makes a solid unit. You can see an ice ball form, and since this tip of the cryoprobe is now fairly frozen to the lens, with instruments and with some movements in various ways, you just

pull the lens out of the eye. That's the cryoprobe.

Q Dr. Plain, in the proper performance of a cataract extraction with a cryoprobe, should the surgeon avoid touching that cryoprobe to the back of the cornea?

A You avoid -- this is separated and taut, you avoid touching the back of the cornea either with a cryoprobe, with a needle or with anything, because once you break this endothelium, you -- that is not you, your patient has trouble.

MR. RHEINGOLD: That is all the questions I have, your Honor.

THE COURT: Mr. Begos?

MR. BEGOS: Do you want me to proceed now or do you want to take our break at this time?

THE COURT: It is about 10 minutes before our usual break time. If you want to break now --

MR. BEGOS: I can occupy the 10 minutes.

THE COURT: Go right ahead.

XXX CROSS EXAMINATION

BY MR. BEGOS:

Q Doctor, when for the first time did you meet Mr. Rheingold with respect to this case?

A This morning, sir.

Q Did you have some contact with Mr. Rheingold

or some member of his staff before this morning?

A I have spoken to him by telephone and I have also written to him.

Q Doctor, when for the first time did you either speak to or write to Mr. Rheingold?

A I don't know when I first spoke to him, but I did write to him in October of 1974.

Q What did you write to him? Did you make a report or did you render an opinion to Mr. Rheingold at that time?

A I reviewed the records he sent me and I wrote an opinion based on my review of these records.

Q What records, Doctor, were presented to you by Mr. Rheingold?

A The records at that time of the Columbia Presbyterian Hospital and more recently those of the Yale Hospital.

Q Doctor, I am referring now to what you had available to you in October of 1974 when you rendered a report to Mr. Rheingold?

A The records of the Columbia Presbyterian.

Q When you say the records of Columbia Presbyterian, do you mean the hospital records for --

A Hospital records, and there was some information concerning Dr. Knapp's preoperative version.

Q Doctor Knapp's preoperative vision?

A Yes.

THE COURT: You mean preoperative examination.

Q You mean the patient's preoperative --

THE WITNESS: Yes, of course, his interpretation of her vision. Yes, your Honor. I am sure Dr. Knapp didn't have a cataract removed.

Q I hope so. When you say the patient's preoperative vision, you are referring to the records of Dr. Knapp, are you not?

A Yes, sir.

Q Doctor, may I see that report that you rendered to Mr. Rheingold in October, 1974?

A Yes.

MR. BEGOS: May we mark this for identification, your Honor.

XXX (Defendants' Exhibit A was marked for identification.)

Q Doctor, following this letter dated October 11, 1974, did you have any further correspondence or contact with Mr. Rheingold?

A By telephone, yes. I don't know the date.

Q Do you have any recollection of the substance of that conversation?

A Yes. Not a complete recollection, but the substance of it is in my mind.

Q Doctor, did that relate to additional medical records or medical information relating to Mrs. Johnson?

A It could have been or it could have been due to a further review of my first opinion.

Q A further review of your first opinion?

A Yes, yes.

Q As a result of a further review of your first opinion, did you change the opinion expressed in your report of October 11th?

A No, sir. It made it more firm.

Q Did you put that in writing, Doctor, at any time?

A No.

Q In other words, Doctor, the only written communications between yourself and Mr. Rheingold are this correspondence of October 11th --

A No. There was another letter -- and I can't find it here, I dare say Mr. Rheingold has it -- where I reaffirmed my opinion and made some other comment. I don't know what because I just don't have it.

Q Can you find it, Doctor?

A No, sir.

Q Doctor, was this your first contact with Mr.

Rheingold?

A This morning?

Q No, this particular matter, this Johnson case. Have you had some prior contact with him on another matter?

A Never heard of him before, sir.

Q Do you know a Mike Kronisch, Doctor?

A Yes, I do.

Q Who is Mike Kronisch?

A He is a New Jersey attorney.

Q Did you have some contact with Mike Kronisch prior to this case?

A Yes, yes.

Q What contact did you have with Mr. Kronisch? Did you have some business relationship with that gentleman?

A Not quite business. Number one, he asked me if I would enter this case. I said, "No, not until I have all of the facts in front of me." He had also asked me on a previous occasion would I enter another case, and I refused because there was nothing to his allegation.

Q Doctor, did Mr. Rheingold tell you in a letter on October 7th that he and Mr. Kronisch were working together on this case?

A That was my impression. That's how Mr. Rheingold

found me.

Q Doctor, for how long prior to 1974 did you know Mr. Kronisch?

A Very superficially, let's say perhaps for eight, nine years. I don't know, sir, exactly.

Q Doctor, in that eight to nine years in which you have had contact with Mr. Kronisch, have you rendered legal opinions for him?

THE COURT: You mean medical opinions?

MR. BEGOS: Medical legal opinions.

A Yes. I believe on two occasions, the last one was last year, where he sent me cases for a review, and I said there was no misconduct on the part of the physicians involved, and that was it.

MR. BEGOS: Your Honor, I move to strike the response of the witness as unresponsive to the question.

MR. RHEINGOLD: I think it is responsive.

THE COURT: The latter part as to what he did I think is unresponsive and the jury will disregard it.

Q Have you ever testified for Mr. Kronisch?

A Never.

Q Does he practice singly or is he a member of a firm in New Jersey?

A I don't know.

Q Doctor, you indicated in your earlier testimony that you were licensed in New Jersey in 1933. When and where did you attend medical school?

A I attended medical school at the Downstate University of New York in Brooklyn. It was called at that time Long Island College Hospital.

Q For what years or when did you graduate from that institution?

A 1932.

Q Are you licensed in any other state other than New Jersey, Doctor?

A No.

Q Doctor, when and where did you pursue your ophthalmological training?

A I am very happy about that. I was in general practice for 15 years, more or less. I decided to become an ophthalmologist. Therefore, I took one solid academic year year in ophthalmology at the graduate school of medicine of the University of Pennsylvania. Following that I was resident surgeon at the Wills Eye Hospital of Philadelphia. Wills Eye is the largest pure eye hostpial in this country. No nose and throat, just pure eye.

Following that, of course, I took the usual postgraduate courses and lectures, and what not.

Q How long did your residency at Wills last, Doctor?

A In the neighborhood of I believe 18 months.

Q Following completion of that residency and your one year of scholastic work, did there come a time when you were certified in ophthalmology?

A Yes.

Q When was that, Doctor?

A In the early 1950's.

Q Doctor, are you still certified in ophthalmology?

A Yes, sir.

Q Are you a member of the American Board of Ophthalmological Surgery at the present time?

A Yes, sir.

Q Do you happen to know, Doctor, why you are not listed in the 1976 directory of that society?

A Of the American Board of Ophthalmology?

Q Yes, sir.

A I certainly am, sir.

Q You are?

A I am very definitely.

Q Perhaps it is my mistake.

A American Board of Ophthalmology. I am a permanent member.

Q Doctor, I assume after completion of your ophthalmological training and your certification you commenced in practice of ophthalmological surgery, is that correct?

A Yes, sir.

Q Are you still engaged in that practice?

A Yes, I am.

Q Doctor, are you still doing ophthalmological surgery?

A I am.

Q Doctor, you mentioned cataract extractions and the fact that you have done in the course of your time a number of cataract extractions and that you presently do cryo-extractions. When, Doctor, is the last time that you performed a cryoextraction?

A I should be doing one this morning.

Q Oh, Doctor, when was the last time before this morning or before --

A I'd say about 10 days ago.

Q 10 days ago?

A Yes.

Q At what institution was that, Doctor?

A St. James Hospital, Newark, New Jersey.

Q Approximately in the past six months, how many

cataract extractions have you performed?

A I have not counted them. I'd say there were many, but I would also say I am 70 years old and I am purposely slowing down.

Q Doctor, in the course of your years in ophthalmological surgery, did you sub-specialize in any particular area of ophthalmological surgery? That is cataract surgery, retinal surgery, vitreous surgery, traumatic surgery, or what have you, in the ophthalmological field?

A I am definitely a traumatic occular surgeon. I have a tremendous volume of injury to the eyes, both --

Q So would the major portion, then, of your practice in surgery in the past have been concentrated in traumatic injury to the eye or any surgery for traumatic injury?

A A great deal of it. I couldn't enumerate how much, but a great deal, yes. I also do children's surgery.

Q Doctor, what percentage of your practice, if you could affix or ascribe a percentage to it, would relate to cataract surgery in the 25 years, or so, that you have been a certified ophthalmological surgeon?

A I can't give you an exact figure or even an approximately one. I'd have to go back and count the cases.

Q Doctor, as part of your practice in the past 25 years, or so, have you been involved in industrial litigation, that is testimony in industrial cases before any board or governmental agency in the State of New Jersey?

A Yes. At one time I was highly involved in the evaluation of injuries to the eyes in the Workmen's Compensation Bureau.

Q Doctor, did you testify on a number of occasions at proceedings before various industrial boards?

A In the past, yes, sir. Presently, practically not at all.

Q Did that testimony in these industrial proceedings occupy a percentage of your practice?

THE COURT: Obviously it occupied a percentage, if he did it at all.

MR. BEGOS: I am trying to get to the percentage.

THE COURT: Then ask him the percentage.

Q Can you estimate the percentage of your practice that was involved in this industrial litigation?

A Perhaps from 20 to 25 per cent, approximately.

Q And that involved testimony at various agencies with respect to industrial injuries, is that correct?

A A minimum of testimony, a minimu.

THE COURT: Is this a good stopping place, Mr. Begos?

MR. BEGOS: Yes, sir.

THE COURT: We will take our morning break now. 10 minutes.

(Recess.)

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BY MR. BEGLOS:

Q During your direct testimony you indicated that it is only common sense that one would see better in light than in dark light. Is that correct?

A Yes, sir.

Q Is that the case, Doctor, with cataracts?

A I would believe so.

Q Doctor, is it the case with all types of cataracts?

A Certainly a complete or mature cataract, light would mean nothing to it. In the small cataract, light would mean nothing to it. In the small cataract, light would help. That's why we tell these people to get strong light, and very often magnification.

Q Doctor, what is the location of a posterior subcapsular cataract?

A This means that the cataract at that time has only reached one layer of the lens, the very back layer rather than the central or front layer.

Q Doctor, have you looked at the Columbia Presbyterian Hospital record?

A Yes, sir.

Q With respect to this patient's left eye, the eye which I believe you agree should have been operated upon --

A Yes.

Q -- is that described as a posterior subcapsular cataract?

A I believe so. Let me check, please. May I have the hospital record?

MR. RHEINGOLD: I am handing the witness, your Honor, Plaintiffs' Exhibit 1 in evidence.

A (Continuing) Yes, sir.

Q Doctor, that posterior subcapsular cataract, if we accept the definition that you gave us previously, only occupied one layer of the lens, is that correct?

A Yes, sir.

Q Occupying that one layer, it reduced vision in that left eye as of September 18, 1972, to 20-400, is that correct?

A It would seem so.

Q The other cataract in the right eye is also described in the same way as a posterior subcapsular cataract, is that correct?

A Yes, but not the same way, sir. It says here "posterior subcapsular opacities, more left eye." Therefore, in the right eye it was not as marked.

Q Doctor, would it be fair to say that perhaps the cataract in the left eye was more mature or more opaque

than the cataract in the right eye?

A It was more vision-reducing, yes, sir.

Q Doctor, cataracts generally have a natural history, do they not?

A As a rule, they do.

Q That rule is progression, is it not?

A It is not a fast rule. Usually the cataract does start from tiny beginnings to go on to become a bigger cataract, as a rule.

Q Is there any medical treatment, that is any systemic treatment, that can be rendered to prevent cataract development or depress development?

A Yes, sir, there is.

Q Is that in limited cases?

A It is in cases that are not too limited cases where diabetics develop cataracts and they can be arrested or stopped if the diabetes is kept under rigid control. There are also some types of kidney disease where the same occurs. There are some disease things in the body that can make cataracts form and grow, and if those diseases can be controlled, very often the cataract does not grow bigger.

Q Doctor, based upon your review of the records that were available to you, is there any indication of a

disease process in Mrs. Johnson that would have been amenable to some form of medical control to arrest development of cataracts?

A No. This is a very scanty physical examination, which does not go to her system. It involves her blood pressure, her lungs, her heart and her abdomen, but it does not go into the presence or absence of sugar, kidney disease.

Q Doctor, would you look at Dr. Knapp's office record and would you assume for the moment that Dr. Knapp's records contain a notation "no high blood pressure, no diabetes."

MR. RHEINGOLD: What date is that, Mr. Begos?

THE WITNESS: June 19, 1970.

Q June 19, 1970.

A I take this to be the patient's statement to the doctor. It is not substantiated by any laboratory work.

Q Doctor, I want you to assume for the moment that not only was there no history of hypertension, high blood pressure or diabetes in this patient during the time of Dr. Knapp's treatment and her hospitalization at Columbia Presbyterian, and subsequently, during her numerous confinements at the Yale-New Haven Medical Center

there is an absence of any history and/or finding on examination of high blood pressure or of an elevated blood sugar --

A There is no sign of high blood pressure.

Q Doctor --

A Wait, I will answer you about diabetes, please.

(Pause)

A (Continuing) There is no high blood pressure in the Yale Hospital record, but I see nothing to show that any tests for diabetes had been done in either hospital in these records.

Q Doctor, are you looking at a summary section the Yale-New Haven Hospital records?

A Yes.

Q Have you seen the actual hospital records?

A No, sir.

Q Doctor, for the purposes of my question, I want you to assume that there is no evidence in this case, during the time that the patient was under the care of Drs. Knapp and Coleman, and subsequently while the patient on five occasions was confined to the Yale-New Haven Medical Center, of an elevated blood sugar or of a history of diabetes, would that, Doctor, indicate that this patient had any condition that would be amenable to medical

6 lhas 13.3 Plain - cross

treatment to arrest cataract development?

A Assuming what you say to be so, my answer would be no.

Q So that as far as Mrs. Johnson was concerned, in September of 1972, she had a fully matured cataract in the left eye that you feel should have been operated upon?

A I didn't say she had a fully mature cataract in the left or the right eye. She did not. She absolutely did not. She had opacities in the lens, but in a mature cataract, that means that the entire lens is dead gray or dead white and covered completely with cataract. She did not have a mature cataract, no, sir.

Q Doctor, in other words, you say that she would have to have, to have your definition of a mature cataract, total loss of vision in the left eye?

A It is not my definition. It is a universal definition. If the cataract is mature and the cataract is completely gray, of course there is no vision.

Q Doctor, this cataract that existed in the left eye was sufficiently mature to seriously compromise her vision in her left eye, is that not so?

A Yes.

Q That vision, Doctor, was below what is considered

7 lhas 134 Plain - cross

legal blindness?

A Yes, it was, indeed.

Q And she had for all practical purposes no useful vision in that left eye, is that correct?

A That is correct.

Q Doctor, with respect to the right eye, she had a subcapsular opacity?

A Yes.

Q Posterior subcapsular opacity?

A Yes.

Q And she had 20-60 vision with that subcapsular opacity?

A Yes.

Q Uncorrected vision?

A No. Whether it was due entirely to the subcapsular opacities or to the need for an eyeglass must be considered, because the eyeglass allowed her to see through what you say is a cataract change in the right eye. She saw 20 over 30. So the glass indicated a refractive error, meaning a need for glasses.

Q Doctor, with the corrective lenses or with the lenses applied by Dr. Knapp in the dark she was able to see 20-30.

A Yes, sir.

Q Out of that right eye.

A Yes, sir.

Q Doctor, when dealing with a cataractus opacity, does the patient, when that cataract is a posterior subcapsular cataract, see better in the dark than they see in the light?

A I don't think so.

Q You don't think so?

A No.

Q I believe earlier in your testimony you indicated that the decision to operate or the decision when to have cataract surgery is a mutual decision.

A Of course.

Q And it is a decision between the patient and the surgeon?

A Indeed.

Q I ask you to assume, Doctor, for purposes of this question, that the particular hypothetical patient has a cataract in her left eye that has reduced vision to 20-400 and that she has a history or tells her physician that she cannot read newspapers and at the same time has a subcapsular posterior opacity in the other eye with measureable vision at 20-60. With a reasonable degree of medical certainty, Doctor, is it possible from an

9 lhas 136 Plain - cross

ophthalmological point of view for a patient to have such a condition and be unable to read newspapers with both eyes?

MR. RHEINGOLD: I object to the form of the question, your Honor, in that it is not clear when Mr. Begos says "could not read newspapers," does he mean out of one eye, both eyes or what?

MR. BEGOS: I am referring to both eyes, Mr. Rheingold.

THE COURT: You mean either?

MR. BEGOS: Either eye. Both eyes. Normally read newspapers.

MR. RHEINGOLD: Now, your Honor, there is a different --

MR. BEGOS: With the use of both eyes.

THE COURT: Reading newspapers using both eyes.

MR. BEGOS: Using both eyes.

A Of course she can. The vision in her right eye is normal, within normal limits. That in the left eye is no good. Therefore, she can open her eyes and pick up a newspaper and read through her right eye. Obviously her left eye is not going to function for reading. But with her both eyes open or with her left eye closed or removed, for that matter, she can read out of the right eye.

Q Doctor, in daylight or in artificial light,

10 lhas 137 Plain - cross

what happens to the window of the eye? Does it expand, does it constrict or does it remain at a normal aperture or opening?

A If it is relatively fair or good illumination, such as in this room, the opening of the pupil will neither get larger nor smaller. If she is put in a completely or almost dark room, the pupil, the opening through which you see, will get larger. If she is put under a very bright light, moderately bright light, the pupil will get narrower.

Q Doctor, as the pupil narrows with a posterior subcapsular cataract or opacity, does that restrict or eliminate central vision which is necessary to read a newspaper?

A To the contrary. A small pupil, just like a small aperture in a camera -- when you take a picture, you want good definition, you make your camera opening as small as possible to get good definition. The eye is similar to a camera, exactly similar. So if the pupil contracts or gets smaller, you have better depth of vision and better definition of the object. That is why, very often, if somebody is lost without his glasses and has to read a menu, or something, it is very simple to take a tiny piece of cardbpard, make a pinhole in it, and, lo and behold, you can read the fine print, which you couldn't before without

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your reading glasses. Pinhole vision is always good.

Q Of course, Doctor, pinhole vision in bright light is not a possibility with a subcapsular posterior cataract, is it?

A Yes, it is.

Q It is?

A Yes, because there was not enough cataract there to interfere with this vision of 20 over 30.

Q Doctor, ordinarily, would a small cataract, posterior of the lens, interfere more with direct close fine vision or with distance vision?

A It did not interfere with distance or near vision because the doctor measured it and it was well within normal or slightly off normal limits, by his own measurement.

Q Doctor, do you realize that his measurement was in the dark with correction?

A I don't know what the lighting condition was there, how dark, how light. This says lights down. I don't know how much the lights were down. But I do know if I go into a darkened room, I don't see as well as I do in a light room. Cataract or no.

Q Doctor, would it make a difference, then, how much light was available at the time Dr. Knapp performed

this examination?

A Not too much. It would make a difference, as I explained.

Q Ordinarily, forgetting this case for the moment, small posterior subcapsular opacity, does that interfere more with near vision or fine vision, such as is necessary for reading, or does it interfere more with distant vision?

A It may interfere with both, sir, but in talking about this case, it interferes with neither.

Q Doctor, do you recognize Norman S. Jaffe, professor of ophthalmological surgery at the University of Miami and his book on cataract surgery and its complications as a reliable authority?

A No, I do not, sir.

Q Doctor, is there any purpose in using drops as part of an eye examination to dilate a patient's pupils?

A Yes, sir, there is.

Q What is the purpose of dilating pupils as part of an eye examination?

A When you dilate the pupils, you can get a clear view of the inside of the eye with the ophthalmoscope. You can see the lens, you can see the vitreous jelly, you can see the retina, you can see the optic nerve. It is a good purpose.

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Q Doctor, with a dilated pupil, will that increase or permit the physician to measure visual acuity in a cataractus condition better?

A I don't understand, please.

Q Doctor, when you dilate a pupil, is it easier for the physician to attempt to perceive pinhole vision through a posterior cataract?

A Those two statements negate one another. If you dilate the pupil, you can't have pinhole vision. Pinhole means exactly what it means, like through a pinhole. You can't take pinhole vision through a dilated pupil. Not that I know of. You can take it, but the dilated pupil in itself blurs your vision. We put these drops in to examine the interior of the eye, but we don't take the final vision reading because when the pupils are dilated your vision decreases for many technical reasons.

Q Doctor, would it be fair to say that the decision, given an individual's state of vision in both eyes, with respect to when to proceed to cataract extraction is a matter of personal choice with respect to the surgeon and -- I am sorry -- personal choice as to the patient and judgment as to the surgeon?

A No, sir. Let me take the patient. The average patient trusts the average doctor and will do what the doctor

tells the patient to do. The patient is told, "You need a cataract operation on this eye," the patient will go along with it because the patient trusts the doctor. As far as the professional judgment of the doctor, it is not a matter for judgment at all, sir, because I think a first-year medical student would know that 20 over 30 vision does not require a cataract operation.

MR. BEGOS: Your Honor, I move to strike that latter portion of the response as unresponsive to the question.

THE COURT: It will be stricken. The jury will disregard it.

MR. RHEINGOLD: Your Honor, he asked about judgment. He gave his answer.

THE COURT: He didn't ask about that specific example.

Q Doctor, do you perform in your ophthalmological practice a bilateral cataract extraction during the same hospital admission or have you ever?

A Yes, I have.

Q Doctor, is there a certain volume of ophthalmological surgeons that perform bilateral extractions during the same hospital admission as a general practice?

A Of course. When there is a disturbing cataract

in each eye, they can be done during the same hospital stay.

Q You say that is only when there is a disturbing cataract in both eyes?

A Yes. When I say disturbing, I mean a cataract in either eye or -- in both eyes that is reducing the vision so much that the patient can't get around well. A full-blown cataract.

Q Is it usual in cataract extraction, when the procedures are performed, whether they be single or bilateral, for each eye to have identical visual acuity, or is there usually some variation?

A There is usually a mild variation, a mild one.

Q At what level would you say vision in the right eye would have to deteriorate to before you would consider bilateral extraction?

A If this lady's vision in the right eye was in the neighborhood of 20 over 60 or 20 over 70, I would begin talking about and suggesting a cataract extraction to the patient, and with no correction, that is no glass improving this 20 over 60 or 20 over 70.

Q Doctor, a patient with uncorrected vision of 20-60 in one eye and legal blindness in another eye, would that person experience difficulty in driving a motor vehicle in daylight, in bright sunshine?

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A If vision was 20 over 60 and could not be improved with a glass, yes, there would be difficulty.

Q Doctor, for the moment assume a single cataract extraction of the left eye, a cataract not fully developed remains in the right eye. That patient following that cataract extraction would require contact lenses, at least, to adjust her vision or she would require a cataract eye frame for one eye, is that correct?

A Yes.

Q That would create problems, would it not, with double vision?

A Temporary problems, yes.

Q What do you mean, temporary problems?

A Because if double vision was created with the use of an ordinary thick cataract lens, the situation is easily remedied. The patient is given a contact lens over the operated eye, and off they go with synchronized vision in both eyes.

Q Doctor, are there a number of patients, individuals, that cannot tolerate contact lenses?

A There are some, yes. I don't know the exact number.

Q Is it regarded by some patients as an inconvenience?

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A I suppose it is.

Q At the very least, in this hypothetical case, if only the one eye was operated on, either eyeglasses or a contact lens would have to be utilized to permit that patient to have somewhat normal vision?

A Preferably contact lenses. Lens, rather.

Q Then, Doctor, based upon the normal history of progression, the unoperated cataract would at some point require extraction?

A No one can tell. No one can answer that, because some cataracts begin to form and they stop forming and they stay stationery, just like some patients begin to form a cataract and in three months you see it is almost mature. No two people -- no no eyes react quite the same.

Q Doctor, in this case is there anything you have seen in the records to indicate, based upon this lady's condition, that this cataract in the right eye would not mature?

A There is nothing to indicate that it would not or that it would.

Q So that at some point it would mature and interfere with vision in that eye?

A It could and it could not.

Q What are the probabilities of it not progressing?

A Well, there is a chance that it might progress in this particular individual.

THE COURT: He is asking you about the probabilities. Can ycu quantify it?

THE WITNESS: No, your Honor, I can't put a time table on the growth of any cataract.

THE COURT: Not a time table, but percentagewise, what is the probability that it will progress?

THE WITNESS: Let's say -- and this is only an educated guess -- possibly 40 percent probability.

Q What is the probability, Doctor, that it will not progress?

A Again, an educated guess, no more, 60 percent.

Q That the cataract will not progress?

A No, no. I am a little mixed up here. I said 40 percent that it would progress, 60 percent that it would not.

Q Doctor, does this not run contrary to the natural history of cataractus disease?

A We are not talking about the natural history of the whole field. It does not have to be completely accepted that this cataract is going to mature and that this one is not. No one can tell you, really, actually. The natural history says yes, it may progress. They usually progress.

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But I have seen enough cases to show that they don't fall within this rule. I followed people with beginning cataracts for twenty years and they never progress in the other eye.

Q Doctor, are these people that have no known medical cause for the cataract or are these people with cataracts similar to Mrs. Johnson?

A Ordinary cataracts.

Q Ordinary cataracts?

A Yes.

Q Is there any trauma involved in those individuals as a precipitating factor?

A An injury to the eye can precipitate or cause --

Q No, I am asking about those particular people that you followed for twenty years without any progression.

A These were not traumatic cases. They were the ordinary types of cataract without injury or trauma.

A Over that twenty-year period was there no progression or deterioration in the visual acuity of those people?

A Yes, but not due to the cataract: due to a need for a stronger eyeglass, due to aging changes which had no relation to the cataract. That is, the opacity remained the same throughout the period of observation.

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Q Have you ever written a paper with respect to this experience?

A Sir, I am not a professor. I am an ordinary practicing ophthalmologist who is not looking for medical fame. No.

Q Doctor, you talked in the course of your direct examination about the necessity of avoiding contact with the posterior portion of the cornea during the course of cataract extraction, is that correct?

A Yes, sir.

Q You indicated that any contact with that rear portion of the cornea should be avoided?

A Yes.

Q Doctor, in the course of cataract extraction, is it necessary for there to be some contact with the posterior portion of the cornea to remove the cataract?

A Never, never.

Q Doctor, in some way when the cornea is incised or when the eye is incised to enter into the area where the lens is located, that insertion goes around the circumference of the cornea, does it not?

A Yes, it does.

Q When that insertion is made, the cornea must be brought forward?

A Yes, it is. It has to be.

Q How is the cornea brought forward to permit the surgeon to get an instrument in to remove the cataract?

A The cornea is brought forward either with a forceps, like a pair of tweezers, or by a stitch put in the cornea so the assistant can hold the cornea down with it. But, this does not involve the endothelium, because the endothelium starts to peter out as it reaches the area of incision, normally. It gets non-existent. So this part is not touched by the tweezers nor is it touched by the stitch that is used to hold it.

Q We are talking, then, about a different area of the cornea, but some portion of the cornea must be touched either with the stitch or with the suture needle and stitch or with the instrument to pull it forward?

A The endothelium is not entered.

Q Pardon me?

A The endothelium is not injured, touched nor entered in this procedure. If it were, we would have to abandon cataract surgery completely.

Q The central portion, Doctor, of the cornea is not touched, is that correct?

A Yes, that's right.

Q But the peripheries or the outer margins of the cornea has to be touched?

A The extreme outer edge where the endothelium is almost absent, if not absent.

Q That must be touched?

A It has to be, of course.

Q Doctor, is that touching in the course of ordinary cataract extraction detrimental to the posterior cornea?

A No. No, sir.

Q Doctor, based upon your experience with cataract extraction and in particular with injury to the eye in the course of your years of practice, if a cornea is substantially damaged or damaged as a result of instrumentation, either by a cryoprobe or by a forceps or some other instrument, in the course of cataract extraction, is there not a reduction in vision in that injured eye?

A If the back of the cornea is injured, most decidedly.

Q And, Doctor, assuming the back of the cornea is injured in the course of the cataract extraction, following the operation would the patient, depending upon the degree of injury, have some degree of vision loss in that eye?

A I would expect there to be some vision loss.

Q Depending again upon the degree of injury and the exact location of injury, that vision loss would be as a result of the injury, is that not so?

A If nothing else were wrong with the eye or the operation, yes.

Q Doctor, that vision loss that the patient had postoperatively, if it were due to instrumentation of the back of the cornea, that patient's vision would not thereafter improve, would it?

A Again, depending on the degree of the injury. If it was moderately severe, the vision would not improve.

Q Doctor, based upon the probabilities of injury to the posterior cornea during cataract extraction, is it not expected and usual that following recovery from the procedure there is some limitation in vision if the injury is to the central area of the cornea?

A Yes.

Q And does that vision impairment from that point

as a result of that injury to the central corneal area remain stationary and permanent?

A It remains permanent. Whether or not it remains stationary is conjectural.

Q In other words, it could further diminish, could it not, depending upon the nature of the injury?

A The chances of it diminishing is less than the chance of getting greater.

Q Doctor, is it likely that a patient can undergo a cataract extraction in which some injury occurs in the course of the extraction to the central corneal area involving the endothelial layers and that patient's vision postcperatively to remain at a certain level for two to three months and then deteriorate without some other intervening factor?

A I don't think I can answer that. You don't tell me what level of vision there was, where the vision went to.

Q Doctor, why don't you tell me, based upon your review of these records, what injury Mrs. Johnson sustained to her right eye as a result of cryoextraction of her cataract?

A Yes. Two things: The touching of the cornea with the freezing unit, as well as the pushing forward

of the jelly, the vitreous of the eye, both of these things together make this picture of severe corneal damage.

Q Doctor, let me understand you, do you say in fact at the time of Mrs. Johnson's second operation on October 31st that two things happened, that the posterior cornea was touched with the cryoprobe?

A Yes.

Q And the vitreous came forward?

A Yes, based on this record, sir, of the first operation at the Yale Hospital, right penetrating keratoplasty, that means corneal transplant, plus anterior vitrectomy. That means he had to take vitreous out of the front of the eye. It was there in a position to touch the cornea.

Q When was that performed?

A January of 1974.

Q January 5, 1974?

Q Yes, sir.

Q Doctor, based upon that you concluded that there was vitreous that came forward, is that correct?

A Obviously, sir.

Q Based upon that, sir, how do you conclude that there was injury to the posterior cornea by the cryoprobe?

A I conclude that both of these things happened

because there is mention of a probably or possible or question mark cryoprobe injury in the records.

Q Would you please read that to me, Doctor?

A Yes. We are talking about the right eye. November 1st, "moderate reaction."

Q That's "right eye moderate reaction."

A "And marked striate." He means stria keratitis. He assumed it is understood -- there is no striate anything --

Q What is striate, Doctor?

A It indicates a marked inflammation of the cornea where the cornea is thrown into microscopic folds, and then after this, in parenthesis, there is a question mark, and the word cryoprobe. "Question mark cryoprobe."

MR. RHEINGOLD: For the record, I'd like to have the record show that the witness is reading from part of Plaintiff's Exhibit 1, the Columbia Presbyterian record.

Q Striate in cataract extraction, marked moderate, is that a normal finding in the postoperative period?

A Not marked, no, sir. A very slight striate keratitis is of no significance. You have to use the microscope to see it. A marked one can be seen with the naked eye. That is of significance.

Q You say the only possibility for that marked

striate postoperatively was some trauma to the cornea?

A By this notation, yes. By later notations, something else.

Q Now, Doctor, a marked striate is a reaction to a much greater degree than mild, is it not so?

A Yes, of course.

Q And mild striate in the postoperative period, is that a fairly normal or usual postoperative finding?

A It is not usual, not in every case, but also it is not unusual in that it does appear in some cases.

Q A marked striate, then, would be indicative of an injury to the cornea or what would it be indicative of?

A It can be indicative of a marked injury to the cornea or to a poor reaction of the eye to the surgery. Either one or both.

Q Doctor, that is two different situations, is it not?

A No, sir.

Q A poor reaction of the eye or a reaction to instrumentation?

A It is the same thing, isn't it? It is the same thing. It is a severe reaction to something wrong in that eye.

Q Could a striate or a marked striate result from

inflammation?

A Yes.

Q Would that inflammation have to be a result of instrumentation?

A It could be. It also could be due to rough handling of the eye, it could be in the inherent nature of this eye to react poorly to surgery.

Q So there are three possibilities, then?

A Yes.

Q Instrumentation, rough handling or some inherent characteristic in the eye?

A I might add a fourth, if I may.

Q You may.

A Operating on an eye without a mature cataract creates a lot of tugging on that eye because the fibers that hold the lens in place in a young person, and 40 or 42 is young, holds the cataract in place very firmly. There has to be a certain amount of tugging on the fibers of the lens in pulling the lens out, as opposed to an older person, a person of 80 or 75, you can just about lift it out because the fibers are just about gone. So I will put that in as number four.

Q That is something that has been well recognized for many years, has it not?

A Yes, sir.

Q As a matter of fact, in younger patients with cataract extraction, certain medication is used, is it not?

A Yes, sir.

Q To make it less necessary to tug and pull that lens?

A Yes, sir.

Q Is that medication alpha chymor tripsin?

A Yes, sir.

Q Do you know, Doctor, whether that medication was used by Dr. Knapp?

A I see no indication of it here.

Q Would you look at the operative report, Doctor, for October 31, 1972?

A Yes, he did use it. He injected it into the eye.

Q So, Doctor, based upon the use of that enzyme on October 31st, do you think that he had to tug and pull on this lens to get it out?

A Yes, I would, because this enzyme doesn't dissolve these fibers completely. It loosens them.

Q Doctor, do you see who dictated that report?

A Apparently a Dr. G. Pecko on October 30, 1972.

Q You are looking at the operative report for the

first eye. I would like you to look at the operative report for the October 31st operation.

A October 31st, signed by a Dr. Green or dictated by a Dr. Green.

Q Does Dr. Green in the operative report that he dictated indicate that there was any difficulty or any tugging and pulling necessary to extract the cataract in the right eye?

A No. This wouldn't be normally included in an operating record, "I tugged, I pushed, I pulled." It is extracted.

Q Does he say, Doctor, "The cornea was then retracted again and the anterior pole of the lens was grasped with the cryoextracter and the lens was delivered intact without complications."

A Yes, that's there.

Q Based upon that statement, Doctor, would you feel that Dr. Knapp encountered any difficulty in extracting this lens?

A None that are written about, no, sir.

Q If you would look at the next page of the record, there is a handwritten operation note or a sheet indicating operation note.

A Yes.

Q That is also signed by Dr. Green?

A Yes.

Q Is it not?

A Yes, it is.

Q Is there a line on that sheet indicating complications in operating room?

A No complications --

Q Do you know towards the bottom?

A No complications noted.

Q Is there the word "none" after "complications in OR"?

A That's right.

Q Would that indicate, Doctor, that any unusual difficulty was had in the course of extracting this lens on that --

A None that the surgeons described or wrote about.

Q Doctor, you have indicated, I believe, that from your ophthalmological experience you have participated in the training of young ophthalmologists?

A Yes, sir.

Q Is it good practice as part of their training to require them to dictate or report operative procedures?

A Yes, it is. We have them do that, but, please note that the operation was October 31st and this note

was dictated much later, November 11, 1972.

Q Doctor, are all operative reports dictated simultaneously following the operation?

A Following the operation or a day later, at the most. No man with a volume of work is going to remember what happened two weeks later exactly, unless there was a horrible disaster on the table.

Q Doctor, have you looked at any of the Yale-New Haven operative reports?

A Yes.

Q Other than the summaries?

A No, no. Just the summaries.

THE COURT: Do you anticipate much more cross?

MR. BEGOS: Yes, I do, your Honor.

THE COURT: Is this a good time for a break?

MR. BEGOS: Certainly.

THE COURT: We will take our noon break now and come back at 2:00.

(Luncheon recess.)

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AFTERNOON SESSION

2:10 p.m.

(In open court, jury present)

I R V I N G A. P L A I N, resumed.

CROSS-EXAMINATION (Continued)

BY MR. BEGOS:

Q Doctor, I don't recall exactly where we were at the lunch break, but I believe that we had eliminated one of the possibilities or we had discussed one of the possibilities, tugging on the cataract by Dr. Knapp, that that necessarily -- was not necessary due to the enzyme used.

A The enzyme is supposed to loosen the fibers of the lens. Sometimes it does very effectively, sometimes it doesn't do it so effectively.

Q Based upon the operative report dictated by the resident and the post-operative note written by the resident, he indicated there was no difficulty in removing that lens, is that correct?

A That's correct, sir.

Q So that based upon the records that you had available to you, you cannot determine any difficulty in cataract extraction at that second operation?

A No, no.

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Q Doctor, I believe you also mentioned as one of the possibilities here vitreous touch, and vitreous touch is the -- I believe you said it is the jelly which is in the vitreol portion of the eye, coming forward and coming in contact with the posterior side of the cornea following the lens extraction. Is that correct?

A Yes, sir.

Q Doctor, you based that vitreous touch possibility on the summary of this lady's hospitalization in January at the Yale-New Haven Medical Center, is that correct?

A That is correct.

Q Doctor, I want to refer you -- perhaps before I do that, in the post-operative period following this second extraction, what would the significance of a notation indicating the hyaloid face was intact be?

A That would say that the face of the vitreous or the membrane holding the vitreous in place --

Q Holding that jelly?

A Yes, the jelly, was not disturbed.

Q Was not disturbed?

A According to that.

Q What would the significance of a note indicating a normal anterior chamber be in the post-operative period?

A That there was no infection, that there was no

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inflammatory change.

Q And that the hyaloid membrane had not come forward and had been in touch with the posterior cornea?

A Not at that time.

Q I want to refer you to Dr. Knapp's office records and in particular the note of 12/5/72. Do you have that?

A Yes, sir.

Q It is in the mid-portion of the page. Do you see --

A I have it.

Q Do you see the statement "hyaloids intact"?

A Yes, which --

Q All right.

A May I amplify?

Q Surely.

A This is negated by the note of November 21, 1972.

Q How is it negated, Doctor, by that note?

A Right eye, slight haze and thickness of the cornea with a strand, slight strand, "sl" I take that to be, strand to the incision at 11 o'clock on the position of the eye. A strand of vitreous, which indicates that some vitreous or the jelly had leaked forward.

4 lhas 163 Plain - cross

Q Doctor, could the strand refer to Descemet's membrane?

A No.

Q Could it refer to a striate, a linear mark?

A No. A strand would mean a piece of that tissue, a line-like piece of the tissue, the vitreous tissue, was involved.

Q If the vitreous tissue leaked through, came into contact with the posterior wall of the cornea, would that not cause an adhesion of the hyaloid face to the corneal posterior wall?

A It could.

Q Doctor, a record that you have not seen thus far is the June 27, 1973 office record of Dr. Sears. Have you seen that?

A I don't believe so. No, I don't think I did.

MR. RHEINGOLD: This is a single report out of what we offered as Plaintiffs' Exhibit 3 and which I reserved on in that Mr. Begos wanted to look at it. I reoffer the whole thing. We don't have to mark individual sections of it.

MR. BEGOS: I assume that we will be able at the appropriate point to get it into evidence. Now, subject to connection, I am presenting this to this witness.

MR. RHEINGOLD: I have no objection.

Q Doctor, I show you page 1-131 of Dr. Sear's office record, and up on the top it is dated June 27, 1973.

A Yes, sir.

Q Is there a statement there with respect to the anterior chamber?

A Anterior chamber is deep.

Q What is the significance of that, Doctor?

A Well, it may mean that it is normally deep, it may mean it is abnormally deep. I can't tell from this. It is deep.

Q Does it mean that the anterior chamber or that the corneal posterior surface is adhering to the vitreous face or the hyaloid membrane?

A I don't come to that conclusion from this.

Q Is there a comment further down, I believe in the second paragraph of that report, that the hyaloid face is intact?

A That is correct.

Q Doctor, if there was a leak in the vitreous prior to June 27 of 1973, would you expect to find the hyaloid face intact?

A It could be intact grossly, but there could be a microscopic leak.

lhas 165 Plain - cross

Q Is there any evidence, Doctor, anywhere in that examination, of a microscopic leak?

MR. RHEINGOLD: Excuse me, Mr. Begos. Are you confining --

Q Of a microscopic leak of vitreous to the cornea?

MR. RHEINGOLD: Your Honro, is he confining himself to that one report of Dr. Sears'?

MR. BEGOS: I can look through the entire record if he wants, Mr. Rheingold. I have no objection.

A There is none reported here in this office record.

Q Doctor, another point that you made was the possibility of manhandling the cornea during the course of the procedure.

A Yes, sir.

Q Is there any evidence in the record that you have reviewed of manhandling the cornea?

A Well, you know --

Q First, what do you mean by manhandling the cornea?

THE COURT: I don't think he used the expression "manhandling."

THE WITNESS: I was just going to object to that.

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It is a pretty horrible word.

THE COURT: I think he referred to something like a rough handling or an abnormal --

Q All right, rough handling.

A What I meant by that is that the freezing tip could have touched the back surface of the cornea, producing another chain of events.

Q If it touched the back of the cornea, it would have produced that marked striate?

A That could be, yes.

Q So that when you talk about that handling and instrumentation, you are really talking about one and the same thing, is that correct?

A Yes.

Q Doctor, assuming, arguendo, that the back of the cornea was instrumented in the course of the lens extraction on October 31, it would have been the competent producing cuase of the moderate or marked striate, correct?

A It could have been, among other things.

Q Doctor, assuming again that the back of the cornea was damaged as a result of this instrumentation, what is the natural course of events that would follow in the healing of that area of trauma to the cornea? Would there be scar tissue formation or adhesion?

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A Assuming this, is that what you said?

Q Assuming this.

A Assuming this, a definite chain of events would have followed. The cornea would have become very, very unhealthy, it would have become swollen, it would have developed blisters on the front surface of the cornea, they are painful when the lid hits them, it would have deminished vision and produced a great deal of discomfort.

Q Doctor, I again want to refer you to Dr. Knapp's office records, and in particular 11/14, which is approximately one week post-discharge from the hospital. Is there a reporting of the patient's vision in the right eye a week following her discharge?

A The date, please?

Q 11/14. Perhaps I can help the witness.

A I'd appreciate it.

(Pause)

Q Is vision recorded in that right eye of 20/100?

A Yes, sir, with a glass, 20/100.

Q Down below, both eyes with lenses, 20/60 plus 2?

A No. OS means left eye.

Q 20/60 plus 2?

A Yes.

Q Under external or EXT, is the notation

"injected mild striate OD"?

A That is correct. Right eye.

Q That is an improvement, is it not, in the striate condition that was described on the first post-operative day.

A It seems to be.

Q The 11/21 visit, again the vision shown with respect to the right eye is described as what?

A The right eye with a cataract glass is 20 over 30 minus.

Q Doctor, is that an improvement over the visual acuity of November 14?

A Yes.

Q Is there any reference to striate in that office note?

A No, sir.

Q Looking at December 5, Doctor, right eye again, is it recorded as 20-30 minus?

A It is.

Q The same as it was two weeks before?

A Yes, sir.

Q December 26, right eye?

A 20 over 60 plus 2 letters.

Q Is that a deterioration?

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A I would say so.

Q Doctor, is that variance between November 14 and December 26 consistent with an injury to the back of the right cornea at the time surgery producing damage to the cornea?

A Yes, sir, it is indicated here.

Q Doctor, if the cornea was damaged by an instrument at the time of surgery, how do you account for an improvement of vision and then a subsequent deterioration of vision?

A That's easy to understand. Before this thinning really got its licks in for good, there was a temporary improvement in vision when the back of the cornea was not disturbed and there was no anterior thinning. Here on December 26, although she was receiving treatment with a cortisone drug, with a cortisone drug and a dilating drug, it says slight injection of the eye, slight opacity or grayness on the back of the cornea above. Some central vitreous haze of the right eye. Hyaloids intact, the anterior chamber is clear. These are definite signs of continuing disturbance, advancing disturbance, in the cornea of the right eye.

Q And yet, Doctor, for a period of time vision actually improved?

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A Yes, yes, it did.

Q In spite of, as you say, advancing deterioration?

A Yes, yes, it was telling then.

Q Could the decrease in visual acuity in that right eye in the post-operative period be also consistent with endothelial disposition, endothelial tissue involvement or Fuchs' dystrophy?

A You mean before the operation?

Q No, after the operation.

A No, there is no mention or sign of a Fuchs' dystrophy. Fuchs' dystrophy just does not arise out of the clear sky. Had she had Fuchs' dystrophy, which is a degeneration condition of the cornea, we would have known that before then. Nobody ever found any before operation.

Q What is the course, Doctor, of an eye with Fuchs' dystrophy or endothelial distrophy?

A Mostly very bad, mostly very bad. It begins with a slight disturbance of vision due to clouding of the cornea, either the front or the back, and the condition progresses with the passage of time as a rule.

Q What is the cause of Fuchs' dystrophy or endothelial dystrophy?

A No one knows it, sir.

Q Do some think, Doctor, that it has some basis in

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the patient's nutrition or the ability of the body to nourish the eye?

A Not in the patient's own body nutrition, but the nutrition for some unknown reason, and no one knows, the nutrition or supply of nutrients to the cornea is disturbed. That's about the best you can say. Whether it is hereditary or not, no one knows.

Q Doctor, when Fuchs' dystrophy appears or endothelial dystrophy, and that is to the lining of the posterior cornea, is it not?

A Yes, sir.

Q When that appears in one eye, is it usually a bilateral condition?

A Most often it is.

Q And, of course, the process of the dystrophy, whether it commenced in one eye and then appears in another eye, is inevitably the same, is it not?

A I believe so.

Q And that is total loss of vision?

A In most cases, eventually, yes.

Q Doctor, does corneal transplant in case of endothelial or Fuchs' dystrophy have any great degree of success or have they?

A No, sir.

Q Doctor, if endothelial distrophy or Fuchs dystrophy were the competent producing cause of this lady's loss of vision of both eyes --

A Let me straighten something out.

Q I am just asking you this as a hypothetical question, Doctor.

A Absolutely not.

Q Do you know what the rest of the question is?

A I thought you were finished.

Q Would the endothelial distrophy if it was the competent producing cause of this lady's loss of vision in her right eye -- is there anything -- I withdraw the question.

Doctor, in your report to Mr. Rheingold on October 11, 1974, you mentioned in your report that striate keratitis is often a transitory phenomenon.

A Very often, yes, sir.

Q And that on many occasions it only indicated inflammation in the eye?

A Yes, sir.

Q Doctor, you were also asked a question by Mr. Rheingold apparently in a letter to you with respect to a statement of Mrs. Johnson that she heard the doctor say, "Watch out for the cornea" during the course of this

operation on the right eye. Is it standard practice or routine, usual practice when operating in a teaching institution to instruct the resident or to advise the resident with respect to what to do or what not to do in the course of a surgical procedure?

A Yes.

Q Would you feel under the circumstances that if in fact Dr. Knapp said "Watch out for the cornea," that that would indicate that the resident had injured or touched the cornea?

A Not that statement alone, but the future course of events would show that the resident who was doing this surgery was perhaps pretty close to the cornea or about to touch it, maybe he did, because we do have this difficulty in this eye.

Q Doctor, Fuchs dystrophy or endothelial dystrophy usually causes corneal edema, does it not?

A It may, yes.

Q Doctor, when corneal edema occurs, does it only occur in an eye that a cataract has been removed from or can it occur in a so-called phakic eye?

A It can occur in an eye from which a cataract has not been removed.

Q And very often does?

A Yes, but a Fuchs dystrophy case has a predisposition to further trouble if cataract surgery is done.

MR. BEGOS: I have no further questions. Thank you.

THE COURT: Was your last question whether or not Fuchs dystrophy could cause corneal edema whether or not the cornea is removed? I think that was the question.

If so, I think you meant to say whether or not the lens had been removed.

MR. BEGOS: The lens had been removed. Perhaps I ought to clear it with him.

THE COURT: You so understood the question, did you not?

THE WITNESS: Yes. I knew what he meant.

MR. BEGOS: I am sorry if I transposed it.

(Continued on next page.)

XXX

REDIRECT EXAMINATION

BY MR. RHEINGOLD:

Q From all the records you have before you, did Mrs. Johnson suffer from Fuchs dystrophy?

MR. BEGOS: Objection. Improper redirect.

THE COURT: Overruled.

A There is nothing in the record from any hospitals here to indicate that Fuchs dystrophy suddenly began after this surgery.

Q Going to the questions just asked of you about the statements made by Dr. Knapp, assuming he said "Watch the cornea," did you take it that that was an instruction to the resident?

A I would, unless the cornea had actually been touched.

Q Sir, I mean to ask you, can we imply -- is it fair to imply that if Dr. Knapp said to someone in the room, "Watch the cornea" he was speaking to the resident?

A If the resident was doing the surgery, yes.

Q On occasions do residents perform surgery under the attendance of a physician?

MR. BEGOS: I object. It has no relationship to this case and I believe it is prejudicial.

MR. RHEINGOLD: I believe it does, your Honor,

because we have a new explanation.

THE COURT: I am going to sustain the objection to the question as posed.

Q In your experience, Dr. Plain, on occasion do residents perform surgery under the supervision of a physician?

MR. BEGOS: Objection, your Honor.

THE COURT: Sustained.

Q You were asked this morning before the break, Dr. Plain, about whether some patients are able to adjust to the wearing of contact lenses or not, do you recall that?

A Yes.

Q Doctor, have you assumed that Mrs. Johnson has been for more than six months wearing a corneal lens which stays in her eye and this is in her left eye?

A Yes.

Q Could we assume that if she was able to in 1975 and 1976 adjust to such a lens that she would have been able to adjust to it back in 1972?

A That's a very fair assumption. Yes.

Q Also this morning, Doctor, you commented on, I believe, the greater difficulty involved in removing a lens from an eye where it was a young person, is that

correct?

A The younger the person, the more difficult.

Q What is the reason for that?

A Because the lens is so firmly fixed in place by small but very tough fibers which stretch from the edge of the lens to back attached in another part of the eye close by, and these attachments are very difficult to break up in the young people, in spite of the use of enzymes.

Q Are those fibers called sonules?

A They are.

Q Without regard to age, is it more difficult to remove an immature cataractus lens than a mature cataractus lens?

A In my experience, the more mature the cataract, the easier the lens comes out with the cryoprobe or whatever else, whatever other method you use.

Q What is the reason for that?

A Because the lens in its becoming a cataract swells, shrinks, it is heavy, heavier than a normal lens, and it tugs on these fibers and weakens them. Also, the changes that make the formulation of the cataract also have weakening changes in the sonules, in these fibers.

Q One last area. The question of the cataract

in the right eye of Mrs. Johnson, if it had gone untreated from 1972 on. Can you make any statement or prognosis about its progress based upon the visual acuity readings that you have from the period when Dr. Knapp first saw her in 1970 down to 1972?

A Yes. Of course, it would take a Solomon to tell you just when such a cataract would get ripe or mature, but by these records here we find that the vision in the right eye since 1970 through '71 and '72 has not changed too much, has not changed radically, showing that there was no increase in the depth or consistency of that cataract, because we get the same visual -- corrected visual readings almost throughout.

Q Does Dr. Knapp have for 1972, September, 1972 examination, fundus readings in the record you have in front of you?

A That means the interior of the eye. Right eye, he says okay. Left eye, he says dimly seen.

Q Let's back up and say what is the fundus part of the eye.

A The fundus is the part of the eye in back of the lens, that is in back of where the cataract forms, and in back of that we have the vitreous jelly, we have the retina, we have the optic nerve and other structures. That's in

back of where the cataract should be.

Q Is it part of a normal eye examination for the doctor to look in the eye and see this fundus area?

A Of course.

Q Was there anything that Dr. Knapp recorded as far as the right eye went that impeded his vision of the rear?

A No. He said it is okay.

Q Was there anything that impeded his vision in the left eye?

A Yes. He said the inside -- really another word for the fundus is the inside -- dimly seen.

Q Is that the cataract interferring with looking in?

A That would be a good conclusion.

Q Can you tell something therefore about the size of the cataract of Mrs. Johnson's right eye at that time in September of 1972 if he was able to see the fundus?

A If somebody can see inside of the eye by examining it with his instruments, it also follows that the patient can see outside through the eye. If you can see in, if the examiner can see in, then it is assumed the patient can see out. There is no impediment.

MR. RHEINGOLD: That's all the questions I have.

THE COURT: Any recross?

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RECROSS EXAMINATION

BY MR. BEGOS:

Q Doctor, is there a difference between a corneal lens and a contact lens?

A Yes, but let me first, please, it is cornea.

Q Excuse me.

A For your edification. Yes, a corneal lens sticks right on the surface of the eye, the cornea. But the other type of lens, they more or less fit over most of the eyeball.

Q Doctor, is a corneal lens usually a soft lens?

A It may be either. The trend is to the soft lens now.

Q Is that more tolerable in some patients than an ordinary contact lens?

A It appears to be.

MR. BEGOS: Thank you.

THE COURT: Thank you very much, Doctor.

(Witness excused.)

Johnson vs Knapp 4/28 74 Civ 5437 Robert Johnson direct to end

Anna R. Johnson and
Robert K. Johnson

vs

74 Civil 5437

Phillip Knapp and D. Jackson Coleman

New York, New York
April 28, 1976

(In open court, jury present.)

THE COURT: I apologize to you. We had some legal matters again that had to be threshed out. I know it isn't very enjoyable waiting in the jury room, not knowing what is happening, like sitting on a stalled train and not knowing what is going on.

MR. RHEINGOLD: Your Honor, one last witness, Mr. Johnson.

ROBERT K. JOHNSON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RHEINGOLD:

Q Mr. Johnson, how old are you?

A 47.

Q Where do you reside?

A 217 Sporthill Road, Easton, Connecticut.

Q You are the husband of Anna Johnson?

A I am.

Q How long have you been married?

A 18 years.

Q You have four children?

A Four children.

Q What is your occupation, sir?

A I am self-employed. I have a retail fuel oil business.

Q Do you have any employees in this business?

A No. Myself only.

Q You deliver fuel oil?

A I do.

Q How many trucks do you have?

A One, and one service truck.

Q Coming to the fall of 1972, Mr. Johnson, did your wife perform various services around the home?

A Yes.

Q Could you tell us the type of things that she did?

A She would take care of the home inside as a normal person, the cooking, the cleaning, the caring of the children, et cetera, inside. The outside, she did the grass, in fact she did the painting of the home because of lack of my time, the shopping was all her responsibilities.

running the children wherever they may have had to go.

Q Did there come a time in the fall of 1972 when you accompanied your wife to see Dr. Knapp?

A Yes, sir.

Q Were you present through the period when she was examined and had a conversation with him?

A Yes, sir.

Q Was there any conversation at that time in September of 1972 about the nature of the surgery that Dr. Knapp was going to perform?

A For the removal of the eyes?

Q Yes.

A Yes.

Q First of all, did Dr. Knapp discuss that he was going to do a cataract extraction?

A Yes. He said he would do it.

Q Did he make any statement in your presence to you or to your wife about the nature of the surgery he was going to perform?

A That 95 per cent were successful and not to worry or be concerned about it.

Q Did he make any comment on the nature of the surgery, other than what you just told us?

A The methods?

Q Did he discuss the methods?

A I don't think so.

Q Did he say anything to your wife about whether he was going to do one eye or both eyes?

A He said, "As long as you are here, you might as well have the both done," or words to that effect.

Q Did you ask the doctor any questions?

A No.

Q After that did your wife go in for surgery?

A Yes.

Q What was her course as you observed it after she got out of the hospital?

A When she came home?

Q Yes, in the months that followed her discharge from the hospital.

A The eyes were improved and then they went downhill.

Q When did that downhill set in, from your observation?

A I believe after a couple of months.

Q On these subsequent visits would you go along with your wife?

A Yes.

Q For how long did your wife continue to see

Dr. Knapp?

A That would be through the spring of the following year and into the summer.

Q 1973?

A Yes.

Q Keeping in mind the last visit, did you have any discussion, you or your wife, with Dr. Knapp about the nature of your wife's condition?

A Yes, why it wasn't improving, why it had gone downhill, why it wasn't improving, and the doctor would say, "Well, it is just one of those things, and there is nobody can help you," and just ushered us out.

Q Did he tell you that on the last occasion you saw Dr. Knapp?

A That was what it was.

Q Did you receive a bill from Dr. Knapp for his services on these two cataract extractions?

A Yes.

Q Could you tell us what that was?

A $1,000.

Q Was that $500 for each eye?

A For each eye.

Q After that did your wife start seeing another physician?

A Yes, sir.

Q Who was that?

A Dr. Marvin Sears.

Q Did you accompany her on various occasions to see Dr. Sears?

A Yes, I did.

Q Is it correct that she had in all four hospitalizations with Dr. Sears?

A Yes.

Q Did you have occasion to visit her on those four hospitalizations?

A Oh, yes.

Q Did you visit her when she was at Columbia-Presbyterian?

A Every other day down at Columbia.

Q I would like to ask you some questions, Mr. Johnson, about your life today in relationship to your wife.

Are there certain services that you perform around the house that you did not before 1972?

A Yes.

Q What are some of the things that you do?

A The outside work, I have to take care of in its entirety now. The inside work, I take care of

cleaning of the house, the vacuuming, whatever else, along those lines. I help a little bit with the cooking, the children are more involved than I with that, and the shopping, I have to do that now, and she will go with me and try to explain what to do, et cetera.

Q When you say she goes with you, you mean grocery shopping?

A Grocery shopping.

Q What does she do and what do you do when you go shopping?

A She tries to explain how to pick out the best of what you should buy for your basket to bring home, with the knowledge that she retains. And I do the actual shopping. She will follow behind me with the basket.

Q Going back to the cooking, Mr. Johnson, you say your children do that primarily?

A If you use the word primarily, I think yes.

Q How old is your oldest child?

A 13.

Q Do you participate in that?

A Yes.

Q What does your wife do as far as cooking or dishwashing?

A She can wash dishes, of course. We have to

check them out. If there is cooking involved, she will try to remember what ingredients should be put in, the amounts. Perhaps she can stir here or there. The children put the stuff in the oven or on top of the stove and then we have our meal. I am not up on cooking.

Q Have you rearranged the kitchen in any way to assist her?

A Oh, no. The kitchen physically is the same as it was.

Q Mrs. Johnson was -- I understand you were in the back of the room -- she described how she did the vacuuming.

Does she do it satisfactorily?

A No, we have to go over it.

Q How about the dusting in the house?

A No.

Q Is that something she attempts to do?

A She attempts it, yes.

Q How has your relationship with your wife been affected by her eye condition?

A It is not the same as it used to be, of course.

Q Can you give us any examples?

A You don't have as much happiness in the home, there is more frustration, more up and down, depending

upon how she feels for the day, basically.

Q Has your social life changed?

A Yes. You don't go out as much or people do not come in as much to be with you.

Q Mr. Johnson, for the treatment that Dr. Sears has rendered, including the surgerious, the visits, the hospitalizations, four times, have you received various bills?

A I have.

Q Have all those bills been paid?

A Yes.

Q I am going to show you a sheaf of bills, Mr. Johnson, that ctually I believe you provided me, is that correct?

A Yes.

Q Can you identify without giving us amounts, or anything, what types of bills are covered in this package that I have given you here?

A These are the bills from Yale New Haven.

Q Yale New Haven Hospital?

A Yale New Haven Hospital and Dr. Sears' bill or bills.

Q Are those bills which you have maintained from the time you received them and then have paid?

A Yes.

MR. RHEINGOLD: Your Honor, I would offer this sheaf of bills taken together here collectively as Plaintiffs' Exhibit 6 in evidence.

THE COURT: Have you seen them, Mr. Begos?

MR. BEGOS: No, your Honor, but I would, without conceding the necessity, reasonable value, I would have no objection to their going into evidence.

THE CLERK: Your next number is 7.

(Plaintiffs' Exhibit 7 received in evidence.)

Q Mr. Johnson, at my request did you work up various summaries relating to this sheaf of bills which you have in front of you which are marked Plaintiffs' Exhibit 7?

A Yes.

Q Were you able to extract the total for the eye surgeries that Dr. Sears performed?

A I have.

Q Would you give us that total, please?

A I have a piece of paper on me that has the totals.

Q You can refresh your memory by looking at that.

Is this sheet of paper you are looking at, Mr. Johnson, totals that you drew up yourself?

A From here.

Q What figure do you have for the total of the eye surgeries by Dr. Sears?

A Dr. Sears' surgery was $3,195. The hospitals were $7,981.

Q Let's stop there. This is the four visits to Grace New Haven Hospital?

A The four visits to Grace New Haven and Dr. Sears' surgery bill.

Q Dr. Sears' surgery was $3,195?

A Yes, sir.

Q What was the hospital bills?

A $7,981 for Yale.

Q Were there also figures for the various visits to Dr. Sears' office over the last few years?

A Yes, $713.

Q Did I ask you also to compute what you paid for purchasing drugs for your wife's eyes?

A Approximately $100.

Q Is a good part of that contained in those bills which you have in front of you?

A That is right.

Q Did you incur any extra costs, Mr. Johnson, in transportation, getting your wife to Yale and back?

A Yes. Between the gas and the parking lot, I would say approximately $100.

Q At any time that your wife was hospitalized, did you incur any costs for help around the home?

A Yes.

Q Were you able to put a figure on that?

A $200.

Q Who was that that came in?

A The lady's name?

Q Yes.

A Mrs. Trup.

Q Was that only while your wife was in the hospital that you had this help?

A Yes.

Q I believe you told us, sir, that Dr. Knapp's bill for the two surgeries was $1,000, is that correct?

A $1,000.

Q I am handing you another set of bills which I offer collectively as Plaintiffs' Exhibit 8. I will show them to counsel. They relate to the Columbia-Presbyterian Hospital.

MR. BEGOS: No objection.

(Plaintiffs' Exhibit 8 received in evidence.)

xx

Q In addition to the $1,000 surgery bill, Mr. Johnson, was there also a bill which you received for your wife's hospitalization at Columbia-Presbyterian?

A Yes, sir.

Q Could you tell us how much that was?

A $1,715.

Q In addition did you pay any fees to Dr. Knapp for his attention after your wife came home?

A Yes, there was a $70 bill.

Q Were some of the visits post-operatively when you came back covered by the original fee paid for surbery?

A Part of them were.

Q In addition did you have $70?

A Yes.

Q Did you also have some costs relating to transportation in getting back and forth to the hospital?

A Yes.

Q Were you able to estimate that, Mr. Johnson?

A I sincerely didn't put it in here, but I would guess maybe another $50.

Q Why don't we omit that, then, if you didn't add it up. Have you incurred, to your knowledge, any other expenses which you relate to the fact that your

wife's vision has been damaged?

A No. I think they have been covered.

Q Mr. Johnson, just before your wife went into the hospital in October of 1972 did you write a letter to Dr. Knapp?

A Yes.

Q Do you have a copy of it yourself?

A No.

MR. RHEINGOLD: Mr. Begos, I believe in Dr. Knapp's file --

Q I first hand you this sheet, Mr. Johnson, and ask you if that is the letter which you wrote?

A Yes, it is.

MR. RHEINGOLD: Your Honor, I would offer this letter as Plaintiffs' Exhibit 9.

MR. BEGOS: No objection.

(Plaintiffs' Exhibit 9 received in evidence.)

xx

Q Mr. Johnson, will you read the letter that you wrote and include the date?

A The letter or the note is dated October 16, 1972.

"Dr. Knapp: You will be operating on my wife's eyes next week. I think you should know that she is somewhat on the high-strung side. After the operation

you may want to prescribe something to keep her settled. Robert K. Johnson."

Q Did you write that on a lined sheet of paper?

A Yes.

MR. RHEINGOLD: That is all the questions I have.

CROSS EXAMINATION

BY MR. BEGOS:

Q Mr. Johnson, had your wife been high-strung before she came under the care of Dr. Knapp?

A No.

Q No?

A No.

Q When for the first time did you become aware that she was high-strung?

A Because of the coming operation.

Q The coming operation?

A Right. She was very nervous.

Q So that this was something that developed between the time of your last visit to Dr. Knapp and the time that she entered the hospital?

A No, I think it was coming from the whole visitis.

Q From the whole visit?

A Yes, the coming and result.

Q In other words, the anticipated surgery?

A Yes, if it was coming to surgery, it was the anticipation.

Q Mr. Johnson, on all of the occasions that you accompanied your wife to Dr. Knapp's office, other than that one conversation that you just related with respect to the operative risks or discussing the operation, do you recall any other conversations between Dr. Knapp and your wife?

A No.

Q No?

A No.

Q Did you on any of the occasions that you accompanied your wife to Dr. Knapp's office ask him any questions that you recall?

A No, sir.

Q During your wife's hospitalization at Columbia-Presbyterian Hospital, did you have any conversation with Dr. Knapp or with any other doctor or nurse on the hospital staff?

A No.

Q In the post-operative period after your wife was discharged from the hospital, do you recall any conversations that you had with either Dr. Knapp or

Dr. Coleman?

A Not that I really can remember, no. I would answer your question no, sir.

Q During that post-operative period, as far as Dr. Knapp and Dr. Coleman is concerned, do you recall any questions that you asked of them?

A No, I would say no to your question.

MR. BEGOS: I have no further questions.

(Witness excused.)

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PHILIP KNAPP, called as a witness by the defendant, being first duly sworn, testified as follows:

MR. BEGOS: May I, your Honor, hand the doctor his office records to facilitate the examination?

THE COURT: Surely.

DIRECT EXAMINATION

BY MR. BEGOS:

Q Dr. Knapp, are you a surgeon or physician duly licensed in the State of New York?

A I am.

Q For how long have you been so licensed?

A 1942.

Q Doctor, would you tell the Court and jury some of your pre-medical education and your medical education, school and year of graduation?

A I graduated from Harvard College in 1937 and from the College of Physicians and Surgeons at Columbia in 1941.

Q Doctor, following graduation from Columbia in 1941, did youhave an internship?

A Yes.

Q Where and when?

A At Bellevue Hospital for 1942 and 1943.

Q Doctor, following completion of that internship at Bellevue Hospital, did you pursue some further training in the field of medicine?

A With an interruption due to World War II, yes.

Q For what period of time were you in service, where and in what areas of medicine?

A I had pneumonia, so I didn't have to go in until early March, and then I was in the U. S. Navy as a lieutenant junior grade in the medical reserve, and I was attached after a week's indoctrination to a construction battalion, and we were shipped to the Pacific Theater.

Q For how long did you remain in the Pacific Theater?

A I left the Pacific Theater -- I got home in July of 1946.

Q I assume during that period of time you were attached to a medical facility?

A No, sir, I was a batallion surgeon with the Seabees.

Q In '46, sir, were you separated from the service?

A Yes.

Q When was that?

A September of 1946.

Q Did you then pursue some further training in medicine?

A I spent four months at Columbia, having been accepted at the University of Iowa for a residency, but I spent four months working in the clinic and studying histopathology in the laboratory.

Q Was that in any particular clinic?

A It is the eye department of Columbia University.

Q Pathology or relating to conditions of the eye?

A Yes, sir. Everything was only eye from then on.

Q Then there came a time when you went to the University of Iowa?

A Yes, sir. I started January 1, 1947 and was there for four years.

Q Is that what is understood as a residency program?

A The first three years they call it a residency, and after that, why, you are an instructor.

Q What did your residency training for that three years consist of?

A Taking care of eye patients, both medically,

surgically, and learning about the eye.

Q That fourth year that you were at the University of Iowa, were you there as an instructor or were you getting some further training?

A Both.

Q Did you receive following all of your training any awards or fellowships or honors?

A I took a six-month Heed Fellowship from January, 1951 until July 1, 1951.

Q What was the purpose of that fellowship, Doctor?

A I studied under three authorities in the field of ocular motility.

Q Where did you study?

A At Dr. Swan in Portland, Oregon, Dr. Scobie in St. Louis at Barnes Hospital and Dr. Burian in Boston at the Boston City Hospital.

Q Following that fellowship, did there come a time when you entered the practice of ophthalmology?

A July 1, 1951.

Q Where was that?

A At the Eye Institute of the Columbia Presbyterian Medical Center.

Q From that time and up to and including the

present time, have you maintained your practice at that location?

A Yes, sir.

Q Doctor, are you board certified in opthalmology?

A 1950.

Q Board certification is what?

A It means that you have taken a written exam and if you pass that then you take an oral exam, and I took that while I was still at Iowa. We came east to Boston for the oral exam.

Q Is that the highest certification that a doctor can receive in the field of ophthalmology?

A Yes, sir.

Q Are you certified in any other specialties?

A No, sir.

Q What professional organizations are you a member of?

A Do you want me to list them all?

Q Are they the usual professional organizations?

A I am on the College of Suregeons, I belong to the American Academy of Ophthalmology and Otolaryngology, the AMA, the New York State Medical Society, the County Medical Society and the American Ophthalmological

Society and the French Ophthalmological Society.

Q Doctor, in the course of your practice of ophthalmology, have you been attached to or a member of any medical school faculty?

A Yes, the College of Physicians and Surgeons at Columbia.

Q For how long have you been on the faculty of the College of Physicians and Surgeons?

A Since July 1, 1951.

Q Doctor, have you since July 1, 1951 advanced in rank or is there such a distinction?

A Yes, there is. You start out as an assistant, then you get an associate, then you get an instructor, assistant professor, associate professor and full professor.

Q Have you gravitated through all of those ranks?

A Yes.

Q What is your present rank?

A Professor of clinical ophthalmology.

Q What is clinical ophthalmology?

A Patient care.

Q Does that include the entire spectrum of ophthalmology?

A Yes.

Q Have you received any honors or awards in your profession since 1951?

A Well, I have given a few name lectures. I gave the Scobee lecture, seven I think it was. I gave the Snell lecture this year in Rochester. I gave the Lloyd Morgan lecture at the University of Toronto I think two or three years ago, I am not certain of the date.

Q Have you published any articles or had any articles published in the field of ophthalmology?

A Yes.

Q Approximately how many?

A I really don't know. I have about seven chapters in books. Maybe 50.

Q 50 articles?

A Yes.

Q Doctor, were they published in any particular ophthalmological periodicals?

A The usual ones in this country. Only two were published abroad.

Q What periodicals were they in this country?

A Well, it would be the American Orthoptic Journal, the Archives of Ophthalmology. Those are

the main ones.

Q Are there any criteria for an article being accepted and published in such a periodical?

A Theoretically they are looking for quality and reliability.

Q The articles and the chapters that you had published, did they deal in any particular sub-specialty of area, sub-area, of ophthalmology?

A I did a research paper on the treatment of tuberculosis with Isoniazid. Otherwise they have been in the field of ocular motility.

Q Would it be fair to say that you have some interest or some sub-specialization in the area of ocular motility?

A That was why I took the Heed Fellowship in 1951.

Q Can you tell the Court and jury what ocular motility is?

A It is people whose eyes cross, turn out, turn up, turn down, sometimes combinations.

Q Is that area concerned with the surgical correction of those conditions?

A In the cases that require it, yes.

Q In your practice at Columbia, have you been

in charge of any particular departments in the ophthalmology portion of the hospital?

A We divide our clinics into the days of the week, except Saturday and Sunday, and I worked in the Wednesday clinic since I started, and I have been chief since I think 1967.

Q What is the Wednesday clinic?

A All the patients that come to the hospital on Wednesday are then assigned to the Wednesday clinic. That's their first visit. This entitles -- I mean includes all types of eye patients: trauma, infections, people with cataracts, retinal detachments, anything. I am also -- have worked in the children's clinic. We didn't have a separate eye clinic, but I ran a muscle clinic since 1952, and I have been chief of the children's clinic since 1960.

Q Doctor, these disorders of ocular motility, are they mainly concerned with the muscles of the eye?

A Well, as far as treatment goes, yes. Actually, quite a few of them are related to trouble in the brain, the nervous system, would be a better way of putting it.

Q Doctor, with respect to the Wednesday clinic,

does the Wednesday clinic include adult cataract patients?

A The Wednesday clinic is primarily for adults. Since 1960 we separated the children from the adults, and inthe Wednesday clinic we see adults almost entirely. It depends where you make your -- draw the boundary between a child and an adult. It is now at 16. It used to be at 13.

Q Doctor, who primarily sees the patients in the clinic?

A At Columbia, both the attendings and the residents see patients.

Q As far as surgery that emanates from those clinics, and I assume there is some surgery that is found to be necessary following a patient being seen from time to time at those clinics, who primarily performs that surgery?

A The resident physician, except in extreme cases, and then an attending will do them. For instance, I did them on monocular cataracts for ten years. In other words, where a person did only one eye. I am not talking about a monocular cataract where they had one good eye. I am talking about a one-eyed individual who had a cataract.

Q That an attending physician, namely yourself,

would perform?

A Yes.

Q If that patient came to the Columbia clinic?

A Yes, sir.

Q Ordinarily on an individual who had cataracts but who had vision but who had two eyes, who would perform that --

A The resident does it entirely with the -- first it has to be approved by the attending and usually the chief of clinic. However, if he happens to be away then the next in line does it. Then at the time of surgery we rotate helping the residents.

Q Is there an attending required to be present at any surgery performed by a resident?

A Yes, sir.

Q Doctor, in your case you have indicated that while you were head of this clinic -- incidentally, are you still head of this clinic?

A Yes.

Q You performed all the monocular cataract operations?

A I don't now. We now have younger men, and Dr. Coleman and Dr. Espy and others do it.

Q From when to when were you charged with the

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responsibility of performing operations on monocular cataract patients.

A I'd say from 1951 until about 1960 or '61.

Q Approximately how many of such operations, if you can recall, have you performed or did you perform in that period of time?

A I really couldn't give you a number, but there would be quite a few. I never added them up.

Q Doctor, from 1951 up to and including the present time, I take it that you supervised residents in the performance of the cataract surgery and other surgeries, is that correct?

A Yes. I no longer supervise on retinas. I stopped retinas when we had a change of regime in 1959. Dr. Dunnington wanted us to do everything, but since he retired we now have sort of people whose main interest is the retina do the retina.

Q In other words, they have compartmentalized the field of ophthalmology and the field of specialization at Columbia?

A Yes.

Q Doctor, confining the question to the issue in this case, cataract surgery, approximately how many surgeries, if you can recall, have residents supervised

at Columbia since 1951?

A You figure maybe about 80 a year.

Q Up to and including the present time?

A Well, as I told you, I am dropping out of that side. I just don't have the time. That's only in the last year or two that I have done that.

Q Do residents assist attending physicians with respect to surgeries performed on private patients?

A Yes.

Q Doctor, was Mrs. Johnson a private patient of yours?

A Yes, she was.

Q Did you perform both of the surgeries performed upon her?

A Yes, I did.

Q Did you have the assistance of a resident in the performance of both of those procedures?

A Yes, I did.

Q Did the resident surgeon in either of those operative procedures do any of the actual surgery performed on Mrs. Johnson?

A No, sir, no, no.

Q What was the function and role of the resident physician at the surgeries with respect to

Mrs. Johnson that he assisted you in?

A Well, in the beginning they hand you things, instruments, sutures. They will take it from the nurse so that you can keep your eye on the field. They sponge, if there is any bleeding. Then when you come to the actual time of the cataract operation, they held the flap of the cornea while you are applying your instrument. Since we are doing the cryo. The old days it used to be a one-man show because you used what they called Arruga forceps. That's the name of the doctor from Spain. You can do that without the help of an assistant. Then they cut the sutures at the end.

Q Is there a practice in effect at Columbia Presbyterian where the resident dictates the operative report?

A Yes.

Q Was that practice in effect at the time that Mrs. Johnson's surgery was performed?

A Yes.

Q Is it the duty of the resident surgeon in dictating that operative report to include in that operative report any unexpected complications, results, accidents, etc., that may occur in the course of the surgical procedure?

A Yes.

Q Is it part of his training and instruction to do so?

A Yes.

Q Is that part of the reason, Doctor, that there is a rule that the operating surgeon does not dictate his own operative report?

A I am not sure that there is a rule at Columbia, but the residents have always done it. That is all I can tell you. I know Dr. Sears testified that at New Haven they have a rule. We may have one. I am not aware of that rule.

Q Doctor, in addition to the actual dictated operative report, is it the responsibility of the resident to write out a brief operative report or a brief -- to fill in a brief form with respect to an operative procedure?

A At the time right after the surgery, he goes over and writes a report of the operation in the chart. He also fills out a slip which is taken into the office, and then he goes out and dictates the operation from that and he frequently puts notes on the slip so he will have the details correct.

Q Does that slip include a section for

complications?

A Yes.

Q If a complication occurs in the course of the surgery, is it his obligation and is he instructed to complete that section?

A Yes.

Q Doctor, you have had an opportunity to look at the chart with respect to Mrs. Johnson. Is there any indication on that form that there was any complication during either of the procedures performed on her eyes?

A There were none.

Q Doctor, we have heard that there were two different residents that assisted you during these two different surgeries, is that correct?

A Yes.

Q Since 1951 up to and including the time that you performed the surgery on Mrs. Johnson, I assume you performed cataract operations on private patients such as Mrs. Johnson?

A Yes.

Q Approximately how many such cataract operations did you perform up to October, 1972?

A It would be many hundreds. I couldn't give you the exact figure. I have never tabulated them.

Q Doctor, in your residency training period out at the University of Iowa, did you in the course of that residency training period perform cataract operations under the supervision of an attending physician?

A Yes. 160.

Q You know the number?

A I looked it up. We had to make that out when we made application.

Q In other words, when you made application for certification, you had to list the cases that you did?

A Yes.

Q I assume you had to list cases that you did in other areas of ophthalmology other than the cataract extractions?

A Oh, yes. I am merely talking about cataracts when I said the 1 60.

Q Doctor, would you look at your office record. Did there come a time when you saw Mrs. Johnson for the first time?

A I saw her first on June 19, 1970.

Q Did you obtain a history at the time of that visit?

A She stated that for two years, about, something

was wrong with her eyes, and that she had gone to one doctor and he hadn't told her what. She said that he was supposed to have told her husband, but that he forgot or something happened. So then she went to another doctor in February, in other words, that would be four months earlier, and was told it was cataracts.

Q Did you perform some examination on Mrs. Johnson at that visit?

A I did a full, complete examination of each eye.

Q Doctor, you say a full complete examination of each eye. Would you tell this Court and jury what that examination consisted of, how it was done, etc.? Would it assist you in describing the examination to refer to the anatomy?

A It might assist other people in understanding what I am saying.

MR. BEGOS: May we use this, your Honor?

THE COURT: Surely.

Q Is this a fair and accurate representation of an eye or an eyeball?

A Yes, except, of course, it is much larger. An eye is about an inch in diameter. The first thing one

does in an examination is take the visual acuity.

Q Tell us what that is, Doctor.

A That means in a lane that's 20 feet long they look at a chart in wich the top letter is 20-400. The next two letters are 20-200, and then so on down to 20-20, which means that the individual parts of these letters subtend an angle of one minute of arc.

The lower the bottom part of the fraction the denominator is, the better the vision. In other words, 20-20 is a great deal better than 20-400, and if you go up it is 20-25, 20-30, 20-40, 20-60, right on up.

When Mrs. Johnson came in, the vision in the right eye was 20-25 double minus. That means that she couldn't read -- she probably missed three letters out of eight in the right eye. In the left eye it was 20-60 plus, which means she probably got one or two letters on the 20-40 line. She was able to read with misses some of the 20-30 line, but she also read part of the 20-20 line for near.

When then refract her. The way I refract, I use a large instrument, it looks like two great big cylinders with a place in between that fits over the patient's face, and they look through these two holes.

It is called a Copeland, after the optometrist that invented the instrument out in Chicago.

Then I turn the lights out in the room, the one light. The room is not totally dark, there is a little light coming in from the side room, and this allows me to retinoscope the patient. That's an instrument that shoots a light into the eye, and telling by the movement of that shadow you can tell whether the patient is nearsighted, farsighted or has astigmatism, and you also can tell if the media are clear, because you will see the shadow of the opacity in the eye, although you can't accurately localize it with the retinoscope.

Then with the light still out you take whatever you find on your retinoscopy, and again take the visual acuity.

It didn't improve in the left eye, but the right eye improved to 20-30 from 20-60. In other words, it improved two lines, approximately. We then take the patient over to an instrument called the slit lamp. The slit lamp is an instrument in which the beam of light comes out in the shape of a tiny hexagonal or like a slit, and you look through the high power and are able to get a very magnified and minute examination of the front part of the eye.

In other words, you look at the lids, you look at the inside of the lids, you look at the -- this part here, the white lining, is called the sclera. This part here is the cornea. Unfortunately, the lens came out with this one. The clear glass is the part of the eye which we call the cornea. Back behind that the colored part is the iris. The half circle there is the pupil, and behind that you can see the crystalline lens, which is suspended bythe zonular fibers called the suspensory ligament of the lens.

Behind that is the ciliary body, this part here and here. It goes back here, and then it comes to the choroid. On all of these, the iris, ciliary body and the choroid make up what we call the uveal tract. That's the vacular and nutritional layer of the eye.

Through the ciliary processes here, which aren't very well shown here, but I think we have another demonstration later, the fluid that comes into the eye percolates through this part here which is normally filled with a substance, reversible hydrogel, like a gelatin dessert. In other words, it has coagulants, collagen, things like that that form a gel.

It is completely transparent in a quote solid gel. Posterior to that you can perhaps see the

way the optic nerve comes in. This is a right eye so the macula would be over here where Mrs. Johnson had her problem and it became swollen from the Irvine-Gass.

These are the retinal blood vessels. Actually, when you are looking in you can see the pigment systems, the pigment isn't too heavy, you can see the blood vessels and the choroid, particularly if there is anything wrong.

Q The choroid is --

A The posterior lining of the uveal tract.

Q Is there an area in that eyeball known as the vitreous?

A That is the reversible hydrogel that really forms the bulk of the eye. This part here is called the anterior chamber between the cornea and the lens with the iris and the pupil, and that's the fluid part where you look with the slit lamp to tell if there is inflammation.

For instance, yesterday when they were reading my record, I said I had H flare. H really is a dash like that meaning two plus flares. As though you were in a smokey room and you sht a sharp beam of light through it, it would then show up, whereas if the air were perfectly clear the beam would go through

and you wouldn't know it was going through until it hits something on the other side.

Q Is there on that model of the eye demonstrated a hyaloid membrane?

A No. The vitreous is not shown on this model, but normally, as with all membranes, they have a surface phenomenon.

In the anterior surface between the vitreous lens, it is called the hyaloid. You do your utmost not to disturb that when you do cataract surgery because as long as that hyaloid remains intact, the vitreous stage matter doesn't come forward.

Say for instance if the vitreous comes forward and stops at the cornea, it then becomes opaque or cloudy. This crystalline lens, this is approximately the shape of it, of course it is much larger here, this is where your cataract forms.

There are all kinds of cataracts. There can be purely cortical. Actually this is made up of cortex laid down all through life. It is like hair. When you are born you have cortical. The field of embryonic nucleii. The cortex is laid down all throughout life. The commonest type is nuclear sclerosis and this comes on in people beyond the age of

50. It is called senile cataract. We all show a little of this. This is what leads to second sight. It is only if it gets worse and it interferes with vision, primarily for distance -- most of these people can still read as they become myopic, and they can can function, because most people, unless they live in the country where they need to drive, as long as they can read and watch to see television, they can get by.

Nuclear cataracts aren't usually done until they become real brown or even they call it a lens with brunescence or if it becomes black they call it nigra, using the Latin.

Other types are cornical opacities. The commonest type outside of injury is so-called posterior subcapsular. It is right in this area here. This is what Mrs. Johnson showed on the first examination.

In other respects the eye examination was entirely normal. That includes interocular pressure, dilating the pupil, studying the fundus, the fundus being looking at the blood vessels, the optic nerve and all the way back, making sure everything is all right. The bigger you make the pupil, the better you can see in. That's why we dilate the pupil.

Q Would you at this time want to show slides as to the other structures of the eye that are not visible?

A If we have them.

(Pause)

A (Continuing) This is the watch glass or cornea that we were talking about and this is where your corneal transplants are performed, as indicated.

Deep in the angle here you can see these two lines, that's the so-called angle of the anterior chamber, through which the fluid of the eye escapes and goes back where these vessels, which aren't really shown, are, and they go back and then go in back to the so-called aqueous vessels into the actual circulation of the veins. If this becomes plugged or are obstructed in any way, this is the thing that's called glaucoma.

In other words, if the fluid can't get out, then the pressure is going to go up. That's treated with medications, usually, and if you can't control it with medications, then you may have to operate. Here is embryonic nucleii, and then you can see the sort of concentric lawyers of the context as though you think of an onion, which is sort of like that, with the fibers going around.

This is the anterior subcapsular region. This is the nucleous and this is the posterior subcapsular. Any opacity in this area is much more damaging to vision because, you see, it is right in the line, and the optics of this system is that the nodal point of the eye is right next to the posterior capsule.

So any opacity here has a very detrimental effect on vision, whereas you can have rather dense opacity here. With an undiluted pupil, you can't see into the eye, the patient can see remarkably well. If you get any opacity here, if the light is enough to constrict the pupil, it can be very interfering with visual acuity, so that a person, even though in a dark room or with light coming from behind him, can see quite well, they have a terrible time if there is bright light.

Therefore, these people, their driving is interfered with because they can't see the road signs. It is particularly bad at night where there is oncoming lights. So, many people who are able to function during the day aren't able to function at night if they, say, have to drive home during the winter, because, you know, it gets dark about 4, 4:30 in this area.

Here is your iris, here is your scilliary. Here are the processes which manufacture the fluid of the

eye.

This is called the capsule hyaloid system, and that goes back to embryonic days. That was what nourished an eye while the baby was being carried with the mother. It is still present in premature babies, if they are early, and that could be aproblem. This whole body here is that jelly. This jelly is particularly loosely attached right over here, and here is your fovia, meaning a little pit, and this whole area here about a little smaller than the disk is called the macular. This is the only area that you have fine vision, reading vision, recognizing people vision.

With peripheral vision, which is very important for walking around so that you don't walk into the table or the chairs, you can probably function better. For instance in retina pigmentosa, they lose all their peripheral vision and they are practically incapacitated even though they can see 20-20 on a chart. A person who has poor central vision has their entire peripheral vision intact and they can see remarkably well.

Back here is the optic nerve, and these sheets, which are part of the sclera, which is the white part of your eye, that goes right back and goes

to the linings of the brain. The optic nerve is actually brain tissue. That's why if it is destroyed, just as with brain tissue, it doesn't come back.

This is a greater detail of the anterior segment. This is so-called epithelium. This is the part where fluid gets caught in the stroma of the eye, you get tiny bubbles which I call bedewing of the epithelium of the cornea. You can get bedewing when the stroma may be still quite clear, even though it is thickened.

Then the posterior layer, there is fine homgenous refractile layers which are called Descemet's membrane, and that is laid down by the endothelium, which is like the lining of a blood vessel.

In here it is a mosaic of single cell layer which, of course, in health are quite numerous, but in some people they can be sparse That goes back into this chamber angle, this is the so-called travecular network where the fluid goes out.

Here is your iris with its folds, and that goes back and drains out. This is the scilliary body, which when it contracts relaxes, and the lens then is sort of -- when you loosen this the lens is then free to expand and possibly change position.

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This is what we called accommodation of focusing. This is how you read. Then you go on back, more scilliary body and processes, and here is the various muscles.

You can see the suspensory ligaments coming up and attaching on to the lens. Those are the things that you have to break, without breaking the capsule of the lens, when you aer removing a cataract.

Q Doctor, on this first office visit, did you find any condition that in your estimation warranted surgery?

A No. Her vision was still much too good.

Q Did you recommend or suggest surgery to the patient at that time?

A No, I told her to come back in six months. These things don't change overnight.

Q Did you have any further discussion with the patient at that time?

A I think I gave her the long-range plan. I usually do. In other words, that you have early cataracts, there is no way of influencing whether they are going to progress or not. Some do progress, I would say the majority, but the progression is so indeterminate, that one can't honestly say that if you

have this type of cataract that you are going to be reduced to light perception in a certain number of months or years.

Some people, and this, of course, makes a great trick, if you put the right patients on medication, you can get credit for keeping their vision good. But in recognized medicine, there is no way of influencing the progression of cataracts or of making them regress.

Q Doctor, on several other occasions up to September of 1972, you have seen Mrs. Johnson, is that correct?

A Yes.

Q Substantially, Doctor, on the other occasions up until September of 1972 did you perform the same examination?

A Yes, except I didn't dilate her when she came back in November. Everything was the same, except the vision in the left eye couldn't be improved. It was still 20-60, but even with the lights out and the proper glass put in front, the vision didn't improve. Of course, the right eye was still 20-25 minus, and it didn't improve either.

I told her she was fine and told her to come back in September, which would then be ten months.

Q Is that September, 1972?

A '71. At that time the left eye was down to 20-80, and to show you how people vary, it now could be improved to 20-40, whereas the year before she couldn't see the 20-40 line. The other one remained at 20-25. The examination was essentially unchanged.

Q Did you give the patient any instructions at that time?

A I told her to come back in a year.

Q Then in September of 1972 the patient returned to your office?

A She said things were much worse, that she was having trouble seeing to drive and that she couldn't read the newspaper.

Q Doctor, to the best of your recollection, did the patient ever tell you that she was unable to read out of -- withdrawn -- that she was unable to read out of her left eye but could read as far as her right eye was concerned?

A No. She said that she was unable to read newspapers, and obviously, I assumed that meant with both eyes open.

Q It isnot usually for people to close one eye to read newspapers?

A No.

MR. RHEINGOLD: Your Honor, I object to that question.

THE COURT: Sustained.

Q Doctor, did you perform some or basically the same examination at that visit?

A Yes, except this time the right eye was now down to 20-60 plus one, and with the lights out it came up to 20-30 minus. The left eye was less than 20-400 with the lights on, and improved to 20-400 when corrected with the lights out.

So that her really walking around vision was 20-60 and less than 20-400. Again, with the light coming over her back with the right eye, she could still read a poor 20-30, but that's a very special circumstance.

Q What circumstance could she read at 20-30 poor?

A With correction, with dim surround and light coming from behind her.

Q What about useful daily vision, just full daily central vision?

A That would be 20-60 and less than 20-400.

Q Would that type of vision correction

interfere with a patient's ability to read a newspaper or a magazine?

A You have to take a person's opinion on this because cataract surgery is an elective procedure, and theer are a lot of people who you correct to 20-30 minus and they are very happy. Others with the usual 20-60 that they have are very unhappy, and the decision on cataracts, as you can see from the earlier examinations, is up to the patient.

In other words, the fact that her left eye had gone down to 20-400, we really couldn't care less if the right eye were still clear, we wouldn't operate on the left eye.

Q Doctor, could you under the circumstances have considered operating on the left eye earlier than 1972?

A There are some people who really have to have good corrected vision in each eye for reasons of employment. I had one guy from the telephone company and he couldn't get an outside job unless he had good vision in each eye. In that case you will give him a monocular cataract to give him a contact lens. But in my practice I don't generally do that.

Q What are the criteria for doing cataract

surgery in your practice?

A When the better or second eye has reached a level where the patient feels they aer handicapped in living their normal life.

Q Doctor, what is your practice with respect to one cataract as opposed to two cataracts during the hospital admission?

A My preference is always to do one eye, the worst eye, and wait until that's entirely out of the woods, and then if the patient wants -- some people are perfectly happy with one eye, they never have the second eye done. On the other hand, most people like to have both eyes, and they have both done.

But I being by nature a conservative do not usually do both eyes unless I feel there is a real reason for going it. In this case, in spite of the testimony, the patient expressed a desire to have both eyes done due to the fact that she would be more or less out of business for two to two and a half months with each eye if she had it done, and that means a housekeeper, etc., four small young children at home, and it was for that reason that we agreed to do the second eye.

In my whole life I have only done four. One was a practicing surgeon here in New York, another one

was a professor of surgery from Bucharest who came over just for it, and another one was a fellow from Beirut in Lebanon, and there I thought they had a real reason to do it. They couldn't make that trip twice and they both had cataracts.

But I would have normally -- if people are around the city of even from relatively far away, we do one, wait until it is well and then they will come back six months or a year later and have the other one.

Q Doctor, I take it there are ophthalmologists who believe that under the circumstances it is appropriate and they stress doing bilateral cataracts at the same time, are there not?

MR. RHEINGOLD: Objected to as leading, your Honor.

THE COURT: Sustained.

Q Are there a wide range of opinions with respect to cataracts among ophthalmological surgeons?

A Yes. Some people routinely do both eyes at the same admission. Some wait three or four days. Otherwise a week. This is standard practice in parts of the country. I have never gone along with it myself, unless, as I said, there was a reason.

Q Are there ophthalmological surgeons, right

in the New York metropolitan area that so practice?

A Yes.

Q Do a larger percentage of their cataract operations involve operations on both eyes during the same admission?

A Same admission. Very few people -- I don't know of anybody who operates at the same time, I mean the same day. You want to make sure that you are not getting infection, that the other eye is doing well, and this becomea a matter of judgment, really, when you think the eye is safe to go ahead and do the other one. I have always thought it was a week in the four times that I have done it.

Q Are there ophthalmological surgeons on the staff of Columbia Presbyterian that favor doing both at the same time and stress doing both at the same time?

A Well, Joseph Wadsworth, who is now the professor at Duke was the only one that I knew personally that did. I can't honestly say what some of the others do because I don't really know. We don't watch each other's private cases very carefully.

Q. On the September, 1972 visit of Mrs. Johnson, that is before surgery, did you feel based upon the request thatthere was reason to do both eyes during the

same hospitalization?

A Well, for the first time the right eye had progressed. Every other time it had been 20-25. Now it was up to 20-60. You could see more opacity. You knew itwas just a matter of time before that eye became as cloudy as the other one because the other one had gone from 20-40 to 20-400 in a year. Here this eye is 20-60 correctable to a poor 20-30 in the dark.

In my opinion, the evidence was there that it was progressing and that therefore it made no difference when you did it. As far as the cataract surgery goes, you could literally take out a clear lens just as easily as a mature one. I am not stressing the ethics of it, but as far as technically one could. There is nothing about the lens, whether it is cloudy or clear, that makes any difference to the surgeon.

I would say the old wives' tale of waiting for the eye to become mature, in other words, totally white, goes back close to the turn of the century, because in those days they didn't have the method of taking the lens out in toto, and these early cataracts didn't do well when you opened them up because everything was sticky and it wasn't ready to absorb.

Q Doctor, did you have a discussion with the patient with respect to the contemplated surgery on that September visit?

A As I said in the deposition, I do not recall specifics, except telling her the odds in her favor were over 90 per cent, and if done under local anesthesia there is no risk to life. However, it is a major risk to the eye, and this lady was nervous and apprehensive. I don't think I went into the various complications that can explain the 5, 6, 7, whatever percentage is, of failure, because if people know they are liable to get explosive hemorrhage, massive infection, various other things like -- well, as you see here, the cornea can go bad, although that's one of the rarer ones.

But they can become very inflamed, they can get glaucoma. All of these things can be very bad for the eye. You can get a retinal detachment, particularly if the vitreous gets disturbed. But I didn't list this. I never do, unless people ask, but I always say "Have you any questions?"

Q. To your recollection, were any questions asked by the patient and/or her husband on this visit?

A I am sure there were, but I can't remember

any.

Q Doctor, is a consent to operate eventually signed by the patient?

A In our hospital, at least with my office in the hospital, it is signed in the office, and then when they are admitted, that goes right up with them to the floor, or if they are a private patient to the room.

Q Does that form --

A It specifically states that they have been informed, their questions have been answered.

Q It also consents to the surgical procedure, is that correct?

A Oh, yes.

MR. BEGOS: Your Honor, at this time, rather than go into something else, could we perhaps show that movie?

MR. RHEINGOLD: Your Honor, I'd like to have a clearer understanding of what the movie is and perhaps pre-screen it. I haven't seen it.

THE COURT: Can you give us a general indication of what the movie is?

MR. BEGOS: Yes. It is a standard cataract extraction, not performed by Dr. Knapp, not performed by any physician at Columbia Presbyterian Hospital.

It has been performed by a cataract surgeon at another institution. It is not a public film, but it is merely a standard type cataract extraction.

THE COURT: Was it performed with a cryonrobe?

MR. BEGOS: Yes.

MR. RHEINGOLD: Your Honor, I object to it unless I could see it in advance.

MR. BEGOS: I have no objection to showing it to him before. It takes approximately six minutes.

THE COURT: Why don't we take our noon break now and you can immediately show the film to Mr. Rheingold and I will come up a little early, say five minutes before 2 and we can argue out any objections before the movie at that time.

I will release the jury until 2 o'clock.

(Pause)

MR. RHEINGOLD: I viewed the film, and on the representation that it portrays substantially the type of operation that Dr. Knapp performed in each of the eyes, I have no objection to it.

THE COURT: We will recess until 2 o'clock.

(Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

THE COURT: I understand we are going to have a movie, Mr. Begos. Do you want the Doctor to explain it?

MR. BEGOS: Yes, your Honor, I would like him to comment on it and we are proceeding.

THE COURT: I might explain to the jury that this is a color movie of what has been represented as a typical cataract extraction, that is removal of a lens that has a cataract, using the cryoprobe technique, which is similar to the technique that was used in the operation on Mrs. Johnson's two eyes.

MR. BEGOS: Your Honor, before we actually start the movie, I'd like to offer this as an exhibit. It is a cryoprobe, and it is the type of cryoprobe that was used during this surgery.

MR. RHEINGOLD: I have no objection, your Honor.

XXX (Defendant's Exhibit D was received in evidence.)

MR. BEGOS: Can I show this to the jury?

THE COURT: All right. If you want, you can have the Doctor explain the parts of it.

THE WITNESS: There is a unit called amols, named

after a South African ophthalmologist. These two are plugged into a unit which is then attached to ordinary current. It is a carbon dioxide, snow type of thing. This is the tip. This is all sterilized, it can be either autoclaved or gas to make it sterile. This is held in the surgeon's hand. You cativate it with a foot pedal, and this thing then turns frosty so that you cal tell it is working. Then you take it off, you dry the field and then apply it to the lens, making sure all other tissue is removed, because if it sticks to the finger or anything else, boom, it makes contact.

This was developed, I don't really know the exact time it started, but Dr. Bellows in Chicago was one of the first to do it in this country, and it quickly took on because its main advantage is that by getting an ice ball in the lens you have a better hold -- we have some forceps too where if you don't put it on just right you could tear the capsule and end up with an extra capsule, which is not a disaster, but it is not what you are trying to do.

So this is widely used in cataract surgery. I would guess probably 90 per cent of cataracts are removed this way with the possible exception of the very modern techniques where they beat them up.

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(A moving picture is shown to the jury.)

THE WITNESS: The eye is immobilized, as have the lids, by an injection. The lids are injected in two ways. To immobilize the lids you can put a probe in here which hits the seventh nerve or you can put it in here. The surgeon here has opened the conjunctiva and he is clearing out the subconjunctiva tissue, and now he is making an incision into the anterior chamber of the eye.

He is now extending the incision. You can't have too big an incision, perhaps 180 degrees. If the lens happens to be large, a small incision can complicate getting it out.

Now the surgeon is putting in a suture which he is going to use to have control of the corneal flap, which you will see. So if anything else besides the lens tries to come out, he can close that trap door. The only difference -- this is the trap door to give free play to the aqueous fluid between the anterior and posterior chambers.

He is now drying off the surface and pushing -- it is a sponge which doesn't leave any lint, he is now putting the cryoprobe on the lens, keeping the other tissues out of the way. He is straightening the cataract. There is the cataract. You can see the brown color through the

nucleus. At this point the anterior chamber is empty.

Now he is putting in his sutures. These should be placed radially, at an even depth. They always use magnification for putting these in. You can tell when you pull up and tie whether they are correct, whether they buckle or move or anything like that, which can lead to a leaky chamber, one of the serious postoperative complications.

The assistant is there cutting the suture. Actually, at the completion of the operation he puts in at least three, sometimes five sutures, some people go as high as seven. The advantage of more sutures is you can allow the patient quicker ambulation and more activity. The disadvantage is that sometimes they can act as a track for either a leak or potential source of invasion from either without or epithelium, which is a very serious but fortunately rare complication in cataract surgery.

Then the conjunctiva is closed. The surgeon in this case puts air in. I stopped doing that about 20 years ago thinking of the possible complications. If the air happens to get behind the iris, it can push it forward and cause an adhesion, meaning you have to go back up and free it. So I never thought the air was an essential part of the procedure. The nice part of the air is that

it pushes the iris and vitreous way back from the cornea and acts as sort of a tamponade, a mechanical tamponade, to keep them back. As you notice, that eye was beautifully still. That is done by what we call a retro-bulbar. The anesthetic is put below the lower lid back behind to the nerves and that gives complete immobilization plus anesthesia.

The operation is painless and the patient is unable to move their eye. If they happened to make a sudden movement while you are delivering the lens, it could be slightly catastrophic, unless you were quick enough to go with them. We described the whole operation. I think the jury has an idea of what you have to do.

There is no way of doing a cataract without entering the eye, except perhaps the old Smith Indian, Colonel Smith. He was the originator of the intracapsular extraction. He would by outside pressure -- before the cryoprobe, if you had a swollen cataract, so that you couldn't grab ahold of it by any conventional means, it was nice to know how to do the Smith Indian. I think I have had to do three in my life.

XXX PHILLIP KNAPP, resumed.

XXX DIRECT EXAMINATION (Continued)

BY MR. BEGOS:

Q Doctor, you were demonstrating the cryoprobe. You referred to extracapsular extraction as being a possibility that you wanted to avoid. What is an extracapsular extraction?

A That's where the capsule of the lens, which is like an outer part of a sack, breaks so that the contents run out, and this was the way they used to do them in the days when you had to wait for a cataract to be mature, because an incipient or beginning cataract is much slower to absorb and is much more like to not be able to wash out, and it stays in there and can form adhesions and foreign body reaction, and you can get definite complications from it.

So I think it was about 60 years ago they started doing intracapsulars in this country. As usual, with any change, there was a lot of resistance. Certainly within the last 45 to 50 years, it's been the accepted method of doing cataract extraction.

Q That is the total extraction, not intracapsular?

A Yes.

Q In certain circumstances today is an extracapsular extraction done?

A With the modern intraoccular lens -- Binkhorst is doing it, he is the Dutch man who popularized this and

has done hundreds of them, and there he puts in a lens shaped like that with sort of haptenes on the side, and they are balanced on the iris. If you leave the posterior capsule particularly with some lens material, he thinks that forms a glue.

In the intraoccular lens, I believe -- I have never done one, still I would say in this country is is a relatively unproven method. 15 years ago there was a big vogue for doing them and many eyes were lost. So most of us are not too anxious to get started again. But they have improved a lot. I am not against it, but I am not starting in ophthalmology, so I would not switch into it at this point.

Q Doctor, did both of the operations that you performed on Mrs. Johnson in October of 1972 go or proceed exactly as you had planned?

A Yes.

Q Did any unexpected or unusual contact with Mrs. Johnson's cornea during the course of either surgery occur?

A If you are referring to the comment in the notes "Watch out for the cornea," we operate with the resident. His job is to hold the cornea back while you are delivering it, and you don't deliver it like this, you usually roll it, trying to rock the sonules and break them. If I am

coming over here, it is like saying "Watch out for that parked car on the side" or a kid on a bicycle or anything else, you want him to be sure to get out of your way. Because if it did stick, and this can happen -- it didn't happen to happen here -- you immediately let go with your foot and your assistant in his other hand has a bottle of salt irrigation fluid which he quickly sips on, and immediately the contact is broken with the tissue you don't want to pull out. I would say the iris is caught more often than the cornea.

Q Let me explore in that area a bit. If there was contact with the posterior side of the cornea during the extraction with the cryoprobe, are you saying that the cryoprobe would then stick to --

A It sticks to anything it touches, yes.

Q In order to release it, you would have to cut the current and secondly use that saline solution?

A Yes. That hastens it.

Q As a result of the contact of the cryoprobe with that portion of the cornea, what would happen to the cornea?

A You would get a localized damage being effected on the endothelium in that area, which would lead to a localized scar in that area.

Q If course, depending upon --

A By scar I mean an opacity. The cornea has to be clear to be worthwhile.

Q Is in effect the contact of the cryoprobe with tissue almost similar to a burn?

A Yes. Cold and hear are very similar.

Q Doctor, if that contact were maintained for any period of time say hypothetically to the back of the cornea, would the freezing extend through to the outside of the cornea?

A In time, yes. That tissue is less than a millimeter thick. It is not a very long distance. In fact, some cold spreads through the whole thing. You can't isolate one little area of cold. Lesser degrees of cold -- the same is true of heat.

Q It would spread to other parts of the lens?

A Oh, yes.

Q You mentioned that the cornea is approximately how big?

A I think the modern feeling is that the center is about 6/10 or 3/5 of a millimeter.

Q Would that be the size of a thick sheet of paper?

A It all depends on what you call a thick sheet

of paper. If you figure there are 25 millimeters in an inch and this is 6/10 of 1/25, it is pretty thin.

Q That is the three layers of cornea?

A That's the entire thickness: the epithelium, Bowman's, stroma, Decemet's and the endothelium.

Q We are talking here of contact with the inner surface of the cornea would be with the epithelium?

A No, endo.

Q That's on the inside?

A Yes.

Q In a cataract extraction such as this, assuming there was contact with the cryoprobe during the course of removing the lens, where would the most likely place on the cornea be for that contact with the cryoprobe if there was any?

A In the extreme periphery. If you remember the incision he made with the scissors, if you rock it across, if the assistant isn't quicker or as quick as you, it is possible to touch. Then you would end up with a localized opacity or thinning in that area.

Q Would that be the outer periphery of the corner?

A It is the corneal or inside part of the button. If you could think of it like this, it would be here where the incision has been made. It might just stick there

and that would be enough to disturb that.

Q Would that, Doctor, interfere with vision?

A No.

Q In that area?

A Not a bit. You can't see there anyway. It is hidden by the iris. The only part you see through an eye is right in the center.

Q Through that very --

A It isn't that small. Your pupil can get four, five millimeters under normal conditions, dark adaptations.

Q If there was contact with the center of the cornea during the cryoextraction --

A You would have an opacity in that area.

Q What would have as far as postoperative vision is concerned?

A It would be very poor.

Q Would there ever be an improvement, even for a relatively short period of time, in vision?

A No.

Q Would the vision you had following recovery from the operation remain at a static level?

A Well, nature is kind to us. This is how Huxley wrote his book on sight without glasses, in that nature tends to clear. The opacity might become less and the

vision would always be cloudy, but it might improve.

Q Would such a phenomenon be a possibility in this case, based upon Mrs. Johnson's vision in that right eye in the postoperative period?

A No, that would not have happened.

Q Why, Doctor?

A Because after the original trauma of the operation, and perhaps there was lower irrigation of the right eye, I don't recall, you get a certain amount of striate in every case because you are bending the cornea, you can't help but interfere, and practically every operation that you look at, if you look carefully enough, there will be a striate in the immediate postoperative period, which I would say could last a week or two weeks, even. After that you would begin to worry.

Q Doctor, would the appearance of striate in the immediate postoperative period in your first note following extraction of the left cataract of Mrs. Johnson be a contraindication to proceeding with the second cataract extraction?

A Not in any way, no. Every case I think always shows a certain amount of central striate. You remember the lens forms really a bigger piece than this little thing here shows, and if you remove that much from an eye,

you are going to have to soften it. You can get -- for instance, if a person has blaucoma and you rapidly reduce the pressure, they can develop edema of the cornea and strate just from a softening.

So you always are going to get some, even though you haven't actually bent the cornea. In cataract extractions it is essential to lift that cornea up, so the degree of bending will vary.

Q Doctor, do you recognize International Ophthamology Clinics edited by Frederick H. Theodore as a reliable source in ophthalmology?

A The International Ophthalmology series, they get recognized authorities on various subjects. They usually pick one man to be the editor. Sometimes the editor doesn't even contribute, and then he asks people that are known in the field to write the various chapters, and I would say yes, I do recognize International Ophthalmology. It is put out by Little, Brown.

Q Page 987, Doctor, prevention of edema, do you agree with this statement --

MR. RHEINGOLD: I object to this procedure, your Honor. There has been no compliance with Federal Rule 803.

(At the side bar.)

THE COURT: What's your point, that he hasn't relied on it in direct examination?

MR. RHEINGOLD: Yes. What is going on now is boot strapping. Is there something in a book which substantiates what you already believe, Doctor. That is a different thing than having relied on something and having done something and now he is explaining what he relied on in doing that.

THE COURT: No. It only has to be relied on in direct examination. It doesn't have to be relied on in the surgical operation in question.

My question to you, Mr. Begos, is to what extent has he relied on it in direct examination?

MR. BEGOS: Really, he hasn't relied on it in direct examination.

THE COURT: Until he does, it really isn't admissible. Until he says something that is consistent with the text book.

MR. BEGOS: This text book states that striate is a normal postoperative complication.

THE COURT: He has said that?

MR. BEGOS: He said that. He said it is normal in almost all operations.

THE COURT: I know he has said it. What I mean

to say is that's what the text book says?

MR. BEGOS: That's the section I was just going to read to him.

MR. RHEINGOLD: Your Honor, I have attempted to study this section for this and other cases, and I believe it involves more than a witness on direct just saying that there is a book that substantiates testimony I have already given.

THE COURT: I think so too. He hasn't relied on the text book so far.

MR. BEGOS: You mean as an authority for the source of his knowledge?

THE COURT: Yes. If you ask him whether he relied on any authorities for the testimony he has given, then you may refer to it, if that is one of the authorities he relied on.

MR. BEGOS: He wouldn't have to rely on an authority because he is an authority himself.

THE COURT: Therefore Section 803 would not permit the admission of it.

MR. BEGOS: Any authority -- if I get him to establish the reliability of the authority, under the federal rule, am I entitled to use that book in summation?

THE COURT: No, because it is not in evidence.

You can only use it if he relied on it in giving an opinion that he has given.

MR. BEGOS: Then I don't need to boot strap him in that way.

(In open court.)

THE COURT: The jury will disregard the question about the text book.

BY MR. BEGOS:

Q Doctor, would you look at your office notes with respect to Mrs. Johnson for the immediate postoperative period?

A Yes, sir, I am.

Q On November 14th Mrs. Johnson appeared in your office, is that correct?

A Yes.

Q What were your findings on that visit?

A Well, I had given her a temporary glass on the second of November. Whenever we take both cataracts out, we don't wait to give them a refined glass. We have temporary glasses. We had given her plus 11's. With that she saw 20-100 with the right eye and a poor 20-60 with the left, and with a correction for astigmatism the left one came up to 20-60 plus 2. The external exam showed some injection.

Q What is injection?

A That means the eye is bloodshot, and there was a mild striate remaining in the right eye. The internal examination was clear.

Q Do you have a symbol OK?

A Yes.

Q Did you discontinue any medication?

A I discontinued the hyacin and I started her on a combination of steroids or cortisone, it is called maxitrol. She had not been using these by some misunderstanding of our instructions.

Q Doctor, when Mrs. Johnson left the hospital was there some instruction that was given to her?

A All of our patients get this typed slip. I can do whatever you want with it.

Q Does that typed slip indicate certain standard instructions to a patient pos-hospitalization?

A Yes.

Q In addition to standard instructions does it also have space for medication?

A Yes.

Q When Mrs. Johnson left the hospital, were certain medications prescribed for her?

A We have her a prescription for maxitrol every

three hours. She was already receiving the hyoscine in the hospital, so I just gave her the bottle and therefore I wrote on the page one drop of hyoscine in each eye. Hyoscine is scopolamine. It is a cycloplegic that dilates and keeps the pupils fixed. It is sort of like splinting a sore arm. It makes the patient more comfortable. The maxitrol is to cut down on the postoperative reaction.

Q What is maxitrol?

A A steroid combination put out by Alcon and I believe it has a neomycin in it.

Q Neomycin is what, an antibiotic?

A Yes.

Q When the patient appeared in your office on the 14th, was she in fact taking the maxitrol which had been prescribed?

A No. There had been a misunderstanding. Even though she knew she had been taking the drops during the hsopital and the fact that she had a prescription saying to use it ever three hours, it wasn't written on the slip so they didn't use it.

Q Did you then on that visit withdraw her from the hyoscine?

A Yes.

Q And place her on the maxitrol?

A Yes.

Q Doctor, what was the reason or was there a reason for the eye being injected on the 14th?

A Well, as long as you have absorbable sutures in an eye, there is always going to be some injection. We use cat gut sutures. They absorb for a varying length of time. Sometimes an eye can be practically healed but as long as there is a little piece of cat gut still absorbing, that produces reaction and you will get some injection.

Q Was the vision of 20-100 in the right eye on the 14th of November satisfactory from a postoperative point of view?

A Yes, because she still had -- it was injected, there was some flare, probably, and she had a mild striate. As long as there is any wrinkling in the cornea, it cuts down vision.

Q Doctor, on the 21st of November, patient returned to the office. What did your examination reflect and would you explain it for the jury?

A With a retraction of a plus 11, plus 2 in a certain axis, in other words, correcting the astigmatism, she saw 20-30, and I was very pleased with that, so I

wrote down not refined. If I had been prescribing glasses, then I would have -- this is probably just my retinoscopic findings. As I told you, we refract in the dark with a retinoscope, and just putting that up she saw a 20-30, so I was delighted. That was only three weeks post-operatively to get 20-30.

Q What eye was that?

A That's the right eye.

Q What was her vision in the elft eye?

A 20-25 minus 1.

Q What did you find by way of injectin?

A There was still a little haze in the right eye and the same thickness of the cornea above. But the rest was clear or she wouldn't have seen that much.

Q Was there any striate on that visit?

A No.

Q Doctor --

A Her comment was, by the way, "Much better."

Q Doctor, if the cornea had been injured by the cryoprobe in the course of your surgery, would there be a discernible defect in the cornea on November 21st and in fact on November 14th?

A Well, the slight thickening above could still be a residual if there was a very transient touch; just

as the lens came out at the end. I wasn't aware of that. That is why I wrote question cryoprobe. She had some bleeding, which varies in every case. When you make your incision, the blood vessels that normally nourish the eye can bleed, and if they bleed in the anterior chamber you irrigate them up to a point, but we actually left some RBC's. If you notice the operative note on October 30th, some blood in AC.

In other words; you don't want to irrigate a lot because that damages the cornia also.

Q The anterior chamber is where?

A This part between the cornea and the iris and lens. In this case the cataract is removed between the cornea and the hyaloid face of the vitreous, which would be back here.

Q Did you prescribe any additional medication on November 21st, Doctor?

A We put her back on the hyoscine every other day and we reduced the maxitrol to four times a day.

Q What was the purpose of returning her to hyoscine?

A Once the pupil -- you don't want to keep it immobile too long, it was back and weak, the effect of the drug is about five to seven days, and therefore we wanted to keep that pupil dilated because it is more comfortable.

Q Then what was the purpose of putting her back on it after having stopped her?

A She came in that other time saying she had -- with frontal headaches, and I wanted to be sure that she wasn't getting any touch of glaucoma in the morning.

Q What is glaucoma?

A Glaucoma is a rise in the intraocular pressure, high enough to have possibly affected the -- they have changed the diagnosis. I guess raised intraocular pressure is a symptom of glaucoma but it is not a diagnosis.

Q Did your special examination indicate anything on that occasion?

A Which day are you referring to, sir?

Q November 21st.

A There was a slight strand to the incision at 11:00 in the left eye. That was probably the fact that the pupil had come down, you could see that when we had tolled the lens out, one of the sonules had stuck there.

Q What was the significance of that?

A Nothing.

Q Doctor, on December 5th the patient again returned to your office. What was her visual acuity in both eyes on that occasion?

A It was 20-30 minus in each.

Q In each eye?

A Yes.

Q Both the right and the left eye?

A Yes. There was mild dry injection. The corneas were clear, that is through the central area.

Q Before you go on, what is a mild dry injection?

A Well, it is hard to describe. These records are written for me, not for the public, so to speak, and I know what I mean by that. In other words, a dry eye can be bloodshot. People that have thyroid, for instance, frequently have bloodshot eyes because the lubrication isn't as good, and it has a certain -- in other words, if it was injected and there was tearing and stuff like that, you wouldn't call -- then you wouldn't use the word dry. But if it sort of looks a little dry and yet is still bloodshot, that's what I mean by that term.

Q Mild dry injection?

A Yes.

Q Was there any significance to that on December 5th, Doctor?

A I don't think so, no.

Q Your next notation is cornea is clear.

A Yes.

Q What does that mean?

A That means the central part was clear. In other words, perfectly clear. This is all done under the slit lamp.

Q There was no sign of injury or scar?

A No. There may have been some thickening way up here. I wouldn't argue that.

Q Doctor, as far as way up there is concerned, that's the area where sutures are placed into the cornea, is that not so?

A That's right.

Q Would that then not be a normal phenomenon in any cataract extraction?

A It is like everything else. The original thickness shed was more than normal. Whether it was due to irrigation or whether it was due to putting the scissors in, whether that damaged the endothelium there, there are lots of possible mechanisms. Not "lots," but several.

Q Doctor, is it possible to do a cataract extraction without in some manner or form traumatising the eye?

A No. As soon as you open the eye, that's an incision. It is just like a cut.

Q That is something that nature didn't intend, is that so?

A That's right. That is why it is a serious

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operation for the eye but not for the individual I mean as far as life and death.

Q Doctor, on December 5th you have the symbols AC plus and two lines, flare. Would you interpret that for us?

A This is the business I was trying to explain this morning with the model, that if you have reaction which is protein or various other things, you could have some cells in there, in the fluid of the anterior chamber, if you put the sharp small beam of the slit lamp which can be cut from a slit -- I am just doing this figuratively, because, after all, the whole eye is only an eye, down to a little tiny thing, you can pick up a very minute change in the protein concentration of the anterior chamber.

A plus-minus would be the lowest we would note. A plus is the next step and then 2 plus. This was between 1 and 2 plus flare. I didn't see any cells or I would have written down also plus or 2 plus or even 4 plus cells. That would make you really worry because then you think of infection.

Q Is that the only significance of AC plus 2 flare?

A Yes.

Q That the possibility of contamination in the anterior chamber?

A No, no, just reaction. That means there is an iritis, which is probably traumatic. After all, you have pulled that big lens through there.

Q Is this a not unsuspected finding in the post-operative period?

A It is not, no.

Q Doctor, your next note is hyaloids intact. Would you explain the significance of that?

A That means that we have not disturbed the face of the vitreous, that condensation. We call that the hyaloid face.

Q That's the hyaloid membrane?

A It is really a concentration of vitreous. It isn't a formal membrane.

Q It is a hardening of the vitreous?

A I am not enough of a surface chemist to answer that, but in medicine or physiology, we consider that just an interface, and it always seems to form a membrance. But it isn't an active membrane like some of the ones in the lungs, for instance, or places like that.

Q Did the vitreous, then, occupy the position that it should normally occupy?

A Yes.

Q At the time of this examination?

A Yes.

Q Was the patient placed on some medication following that visit?

A We changed her steroid to a simple prednisone, and the econo means that the company put it out with the idea of saving individuals money. It is more economic steroid.

Q What was the purpose of the steroid at that time?

A She still had a little dry injection and she still had the flare.

Q Is it unusual to require that kind of medication approximately four to five weeks postoperatively?

A No, I don't think it is. You would prefer it not to be there, but it certainly doesn't mean anything.

Q The patient then returned to your office on December 19th, is that correct?

A Yes.

Q She made some complaint?

A She had a peculiar trouble seeing. Needs to look up or turn head, and I had tried twice to check her with glasses and was unable to. So I said I could see no reason, having examined the eyes, for the change, so I

I said continue the drops three times a day and come back in, and she came in the day after Christmas, and we were again able to get her to 20-30 in the right and 20-35 in the left.

Q What did your physical examination findings on the 26th of December reveal?

A There was still a little injection above, I guess there were still some sutures. The right eye still showed that slight opacity back here. The anterior chambers were clear. The hyaloid was intact. The intraocular pressure was normal.

Q You say intraocular pressure was 13?

A I use an indentation tonometer rather than an applanation, and it is the same principle as if I flipped you a basketball and sayd is this blown up, and you would stick your thumb in. If the ball is very blown up you can't stick your thumb in so you get a very low reading. This has all been worked out over the years. Schiotz was from Denmark and he devised these tonometers. The 13 -- in my tonometer, a reading of 10 to 16 is normal. The higher the number the more normal the pressure. If it goes much beyond 16, then you think the eye is too soft and you start worrying about something else. If it is under 10, then we start worrying about the sign of

glaucoma and you have to start worrying about that.

Q Is there anything else of significance in that examination on the 26th?

A She had a little vitreous haze in the center of the right eye. That means reaction in the vitreous.

Q What would the cause of that be?

A Well, it means that there must be some inflammation going on, irritation, something is causing the fluid that goes to form the vitreous to not be as clear as it should be.

Q Is that the first indication, Doctor, in the postoperative period of something with respect to the vitreous?

A Well, one of the earlier notes, if my memory is correct, on the left eye on November 6th, which would be almost two weeks, about 13 days postoperative, there was some haze. That on the next visit had cleared. The next day.

Q Doctor, that was the left eye on November 6th?

A Yes.

Q This finding was the right eye on December 26th, is that correct?

A Yes. But both eyes had undergone the same thing.

Q Did you examine the retina on December 26th?

A The retina in the right eye was all right and the left eye was okay all the way.

Q Your next visit is January 9th, correct?

A Yes.

Q On January 9th what were your findings?

A Mrs. Johnson came in stating that three days before her vision had gone down and it was associated with her menstrual cycle, so she wasn't too alarmed about it. On examination the vision was down. The right eye was now 20-100, the left 20-60. There was 2 plus flare with mild injection. The pressure was number 16. In other words, softer. We dilated her widely with neosynephrine and scopolamine and we confirmed the mild haze in the vitreous of the right eye, and for the first time we picked up the mild edema of the macula of each eye.

Q The macula --

A Is the part in the retina that does the fine vision. In other words, in the right eye it would be here. It is on the temporal side of the nerve end. It's hard to point to.

Q When you refer to temporal side, you are referring to the outside?

A Yes, excuse me, as against the nasal, the nose.

Q Where the bone is on the side of your skull?

A Yes.

Q Doctor, do you have any opinion as to the cause of the mild edema of the macula in both eyes on January 9th?

A Well, this is the characteristic time for edema of the macula to show up in the so-called Irvine-Gass syndrome which usually comes on in the third month or later.

In other words, some edema of the macula in the immediate postoperative period is almost routine. This is why a person can have a cataract and they say "I see great," but if you check them they rarely see better than about 20-60 or 80, because having taken out the lens, which is a bulk, the vitreous always moved forward. That part in front of the macula tends to come forward and there is almost always a little edema there.

Q However, on previous exams with respect to the retina which you had noted in your office records --

A This is not the same. Hers were clear and then showed up. It would be about 10 or 11 weeks afterwards. I didn't add that up. Maybe it is wrong, but it is close.

Q Did you prescribe any medication for that edema of the macula on that occasion?

A Yes. We continued the econopred four times a

day.

Q Econopred is a steroid?

A Yes.

Q In 1973, early in 1973, as this was, were there any treatments, that is recognized accepted treatments, for macular edema?

A This was a debatable subject. Some people feel that there is no treatment. Others feel that steroids help, in other words, cortisone type things. As you will come to later, some people think that lazer -- but certainly not at this early stage, you wouldn't consider it. Most of these tend to get well by themselves.

Q On January 16th you saw the patient again, is that correct?

A Yes.

Q Had her vision in the right eye changed again?

A It was 20-80 now and 20-40 in the other, so they both improved, and the examination was all right, except for the same mild edema of the maculae was still present.

Q Did you continue the patient on econopred?

A Yes.

Q You saw the patient again on January 30th?

A Yes. The vision was up again. It was up a line in the right and was the same in the left.

Q There was a further improvement, then, in the right eye over that 20-100 on January 9th, is that correct?

A Yes. It was now 20-60 minus 2.

Q Were there any findings with respect to any other portion of the eye other than the maculae on that occasion?

A The maculae were unchanged. In other words, that means there was still mild edema.

Q Did you continue her on cortisone or steroids?

A Yes.

Q Your next office visit was February 22nd?

A Yes.

Q On that occasion she was referred to Dr. Coleman, is that correct?

A Her vision had been cloudy, she said it was clear today, in other words, that it really definitely got quite foggy at times. When we refracted her she was 20-80 and 20-80.

Q That represented a deterioration from the previous visual acuity, is that correct?

A Yes, yes, not as good. The examination, for the first time I described a little small line, the wrinkle in Descemet's that's up above.

Q What's the significance of that?

A That probably means that at the time, whatever

had happened up there, that would be unlikely in the cryo touching, it would be more likely that it had been done with the scissors. The edema of the maculae was very definite. So feeling that I am not a retinal specialist and that Dr. Coleman is, taking advantage of the fact that his office is in the same floor down the hall, I had him see her to put intravenous fluorescein, which is a dye that retinal specialists use to study the circulation of the retina.

Q Was this done on February 22nd?

A Yes.

Q Did the patient go to Dr. Coleman on February 22nd?

A Yes. He made two drawings of the eye, stating that there was leakage OU and he recommended trying argon laser, and in discussing this he said that Dr. Regan from Boston, who was the president of the Retinal Society, at a recent meeting had said this is a hopeful treatment. It is terribly hard to judge any treatment. If you do something in the eye through some extremely extraneous cause it gets better, you can arbitrarily say "That was my treatment." It might not have been. It may have gotten well anyway. This is what makes it hard to judge.

THE COURT: What do you mean by leakage OU?

THE WITNESS: That means that when he put the fluorescein in, the dye -- we have some slides, if you would like to see them, your Honor.

THE COURT: I just thought you ought to explain it for the benefit of the jury.

THE WITNESS: This edema of the macula that's described by Irvine-Gass is intraretinal --

Q Would you demonstrate it perhaps with the model, Doctor, where it is and what it is, if you could?

A I don't think you can with that. We might if we had a picture of the retina. The retina is made up of many layers. There is a special limiting layer, then there is the nerve layer of the ganglion cells, then the inner, the flexiform or fiber layer and finally the outer nuclear layer, and then you get the sensory elements of the retina, the rods and the cones, and finally the pigment epithelium.

Some people say the pigment epithelium belongs to the retina, some people say it belongs to the coroid, anyway, it is that level.

MR. RHEINGOLD: Your Honor, the term OU means each eye.

THE WITNESS: Each eye. You make a distinction. OU means each eye. Everyone in New York says it means both

eyes. This came up the other day when someone said the patient was 20-30 with both eyes. One eye could be blind.

THE COURT: When you say leakage OU, what did you mean?

THE WITNESS: I mean in each eye.

Q The leakage comes from where or would you prefer not to answer that question with respect to the retina?

A Well, although I don't do retinal work, we are constantly going to conferences, both in our own institution, and I am on the lecture tour a lot about motility, but the other subjects aren't all motility, so I hear all this stuff, and I have always been interested because Irvine is a personal friend of mine. In fact, I saw him in California last week. He was the one that first described the Irvine-Gass in 1952, I think it was.

Q Is Irvine-Gass a particular type of syndrome?

A Yes. This is edema that comes on usually following cataract surgery. After all, cataract is the most common operation in which the eyes are opened. I don't know whether you could pick it up on a retina if you happened to open it up or not. I am sure it has been described in glaucoma procedures. But the number of cataracts removed compared to glaucoma procedures is very much in

favor of cataract, so it is usually considered to be a form of edema of the macula in which the fluid can be demonstrated with slit lamp examination and a contact lens to be in this layer, this is in vivo, in a live eye, not under the microscope after you have lost an eye. You can see these.

Now with fluorescein, this is where Gass came in, Gass and Norton, these are the two, Gass started when he was in Hopkins. He developed this technique or at least popularized it of putting the fluorescein into the vessel in your arm and then in a matter of seconds you look in the eye and you can see with a certain colored filter that makes this stuff glow so that it is whitish -- and then you can see these vessels that you wouldn't see. You certainly wouldn't see the pooling. What is pooling is clear fluid.

Q What vessels do you see in the retinal area?

A You only see the larger ones. These are normal capillaries.

Q You are seeing vessels, then, are you not?

A You don't see a capillary. But you see the leakage which comes from a capillary. At least I don't see it. Maybe with enough magnification it's possible, I suppose.

Q That's the fluid, and the source of the fluid is --

A Leakage from the capillaries in this flexiform area.

THE COURT: So the edema comes from leakage of blood into the retina?

THE WITNESS: No, sir. If it were blood, you would have red blood cells. If you know, there is plasma, you know, where people are sensitive, they don't want to give them the blood cells, they can give them the plasma, which has protein in it, albumen and gobulin, a lot of other chemicals, but it is primarily also a very light straw color.

THE COURT: The injection causes that to color or fluorescein so that it can be seen?

THE WITNESS: Yes, sir.

Q Doctor, is there any known cause or is the cause of this edema or Irvine-Gass syndrome known?

A No.

Q Doctor, the Irvine-Gass symdrome is usually only described with respect to the macular edema in people who have had cataract surgery, is that correct?

A It is a particular form of macular edema. Microcystic, so to speak. Actually, these cysts come

pretty big, in some of the slides we show.

Q Does macular edema or similar macular disease, maculated disease, occur in eyes that have not had cataract surgery?

A You can get macular edema with many things, but the so-called Irvine-Gass or microcystic I believe -- again, I am not a retinal specialist -- is limited, certainly as far as Irvine-Gass goes, is limited to delayed appearing -- they have occurred as late as 10 years following surgery, according to one article I read.

Q Doctor, following the examination of the patient by Dr. Coleman on the 22nd, was some treatment recommended to the patient?

A Yes.

Q Would you tell us, Doctor, following the examination, did you confer with Dr. Coleman?

A Yes.

Q Did you confer with Mrs. Johnson?

A Yes.

Q Would you tell us when and where that discussion took place?

A It took place on the second floor, and I think it was right in my doorway.

Q Who was present?

A I think all four of us. Mr. and Mrs. Johnson, Dr. Coleman and myself.

Q Would you tell --

A I told them that Dr. Coleman had recommended that he try and see if he could stop this leakage by applying the laser, and that I thought that was a good idea.

Q Were arrangements made or was an appointment made for this treatment thereafter?

A Yes. In fact, I think that had been made, as far as I recall.

Q Doctor, you were away for some period of time thereafter?

A Infortunately, I had made commitments to go out and talk in two places on the west coast. Yes.

Q When did you next return to your office and see the Johnsons?

A I returned to my office before this, but I did not see them until -- this has to be backwards womewhere, yes, it is, they got typed in the wrong order -- I got back but I did not see her until April 16th. I think she had just seen Dr. Coleman. I did not see her until the 16th.

Q Then did you continue to see her for some period

of time thereafter?

A Dr. Coleman saw her on the 16th and then she came down and I saw her on the 16th. I thought her eye was more injected and the internal was -- for the first time that I had seen her, although Dr. Coleman had seen it in my absence, she had now what we call bedewing or tiny cystopic droplets of water between the epithelial cells, that's the outside of the cornea, indicating that her epithelium was no longer working well. The inside of the eye was murky so that you couldn't really retinoscope her and get a decent reflection.

So Dr. Coleman, once he had seen this vitritis, had been worried about what might be causing it, so he had stopped the cortisone or drops, and as the condition seemed to have deteriorated, I restarted them.

THE COURT: You did what?

THE WITNESS: Restarted them. I checked her in approximately a week.

Q Did the patient continue under your care until sometime in June?

A Yes.

Q When was the last time you saw the patient?

A June 14th.

Q Doctor, could you indicate in that interval

between April 16th and June 14th what generally her course was?

A It was -- as far as the left eye goes, everything was fine.

Q Did vision improve in the left eye?

A The vision in the left eye on May 8th was 20-30 minus and the right eye was less than 20-400, but you could almost get a shadow with the retinoscope. It wasn't clear enough to call it one, but that would indicate that the steroids were helping. I could now see into the right eye and it was hazily all right. I couldn't see well. The left eye showed a slight macular change where Dr. Coleman had used the laser, in other words, a change in the pigment.

Q Doctor, do you have an opinion as to whether or not the laser therapy on this patient's eye was of any benefit to her?

A Well, as I told you, the visual acuity obviously improved a great deal. The retinal picture became more well defined and less edematus. You could say that this was due to the laser or that it would have occurred anyway. I don't know how you can answer that question. Certainly it had not damaged anything.

Q Doctor, you concurred, I take it, in the laser

treatment to this patient's eye by Dr. Coleman, is that not so?

A Oh, yes.

Q What about the right eye, Doctor?

A It went down to no shadow on the 24th.

Q What's the significance of that and what does that mean?

A That means that there was so much opacity, not just in the cornea but in the vitreous -- she had a very severe vitritis, uveitis type of thing. She had some haze in the pupil below. That's the first time we had ever noticed that.

In other words, she had an inflammatory reaction of undetermined etiology.

Q The term corneal edema has been used. Could that also be used to describe what was going on in the right eye?

A She did have some bedewing of the epithelium, but that wasn't enough to explain all the other changes. In fact, it could be the other way around, that the inflammation inside the eye could further damage the endothelium -- not damage it as much as handicap it or impede itsfunction. The endothelium is the pupil of the eye.

In other words, it is what pumps the water out of the cornea and keeps it clear. The term you were using yesterday of Fuchs dystrophy. For generations it was thought to be of the epithelium. It wasn't until much later that they found out that it was the endothelium that went and then following that -- this came with better methods of optical examination.

Q Doctor, we also discussed yesterday or the question arose yesterday of endothelial dystrophy.

A Endothelial dystrophy is the precursor of Fuchs dystrophy, or perhaps Fuchs is the name that's put on it.

Q Is there any known cause for either endothelial dystrophy or Fuchs dystrophy?

A Not to my knowledge.

Q Doctor, on June 14, 1973 you saw this patient for the last time, is that correct?

A I now realize it, yes.

Q Doctor, had you scheduled for this patient a conslutation with any other doctor?

A Well, Dr. DeVoe, I think he was still our professor in 1973, is an expert in lots of fields, but the cornea is his prime interest, and as we operate on the same day every Tuesday, I had been discussing Mrs. Johnson with him, and I had actually wanted him to see her, so we

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actually had arranged through his office to make sure he was there, because once we tried and he wasn't there.

Q This was arranged for what day, Doctor?

A Excuse me. I will have to look.

Q Doctor, your records indicate July 11th.

A Mrs. Johnson told me that she was going up to New Hampshire to get away from the hot weather, and that's why we had given her four weeks. So that would be correct.

Q Mrs. Johnson did not appear for her appointment on July 11th, is that correct?

A No. That's correct.

Q The appointment then with Dr. DeVoe was cancelled?

A Yes.

Q Doctor, following June 14th of 1973, did you have any further contact with either Mr. or Mrs. Johnson?

A No.

Q At any time following June 14th of 1973 did you receive any request from Dr. Sears or any other physician for your medical records relating to Mrs. Johnson?

A No.

Q Did you discharge Mrs. Johnson from your treatment?

A No.

Q Doctor, you are aware, are you not, of her subsequent course?

A Yes.

Q You are aware that corneal transplants were eventually done?

A Yes.

Q Do you have any opinion, Doctor, with respect to the cause of the condition that developed in Mrs. Johnsons's right eye that eventually necessitated corneal transplants?

A Could you rephrase that? Did you say do I have any idea of what went on?

Q Yes, or any opinion.

A Well, my opinion is, from the way her cornea behaved, that she undoubtedly had deficient endothelium. There are now modern research ways, and I don't think it has gotten to the clinical level yet, where they can look in and tell how many endothelial vessels there are in the back of a cornea. I couldn't -- the mosaic you get by indirect illumination could tell you whether it was an abnormal pattern, but I would have no way of guesstimating the numbers, whether it was normal or not.

Then the inflammation plus, according to the

record, she developed glaucoma -- well, glaucoma alone -- acute glaucoma, the reason you see halos around lights is because you have fluid in your epithelium.

Q Glaucoma was the increase in intraocular pressure?

A Yes.

Q And that manifested itself in the patient's right eye, is that correct?

A Not in -- it did subsequently, but I never caught it up. We took it practically every time, even though it was quite a feat, occasionally. I have notes here, squeezing, indicating that it was very hard for Mrs. Johnson to relax. This is a common thing. Lots of patients have this. But it does artificially raise the pressure because if I hand you the football to see if it is blown up and I hold on tight to the other end, you are going to think it is hard, and I let go and it is soft.

Q Doctor, what if anything would be or could be the cause of the subsequent elevation in Mrs. Johnson's intraocular pressure?

A Well, this vitritis and uveitis that she had evidently caused synechia. She did not have synechia when I was looking at her.

Q What is synechia?

A That's adhesions of the iris. It can be a

posterior synechia where, in other words, the iris sticks to -- where the iris sticks to the back, either the lens or in this case the hyaloid, or it can be out here in the periphery, and it can stick to the cornea. Then it is called an anterior synechia.

Q Would that also be an adhesion?

A It is a form of adhesion, yes.

Q To a certain extent are adhesions a normal accepted postoperative event?

A If you gonioscope your patients, you will almost always find a few adhesions between your iris and your wound. There isn't that much room. But significant adhesions are not a normal part of cataract extraction. The worst synechia we see leading to total occlusion of the pupil is just a uveitis. This is why you dilate the pupils or one of the reasons you dilate it.

Q Could an endothelial dystrophy be a contributing or producing cause to glaucoma?

A No. I would say it would be the other way around, that glaucoma would aggravate a tendency to epithelial or endothelial trouble.

Q You are familiar with Dr. Sears' notes, are you not?

A I have read them. I haven't read them in the

last two weeks, I don't think. Whenever we got them, I read them right away.

Q Doctor, what is guttata?

A Well, if the endothelium is sparse on the back of the cornea, you can get these excrescences of that membrane that's laid down, and this looks like an empty space separating the endothelium when you look with the slit lamp. Frequently there is a bronze coloring and quite often there are pigment specks on it.

Q Doctor, at any time prior to June 14th, your last visit with the patient, going back to your first contact with her, on slit lamp examination, did you find any evidence of guttata?

A Never. I will say that following -- when I got back from being away, when I saw her on April 16th, she had enough trouble in her cornea so you would have had trouble seeing guttata, had they been there.

Q Doctor, did you --

A Prior to that I had been able to see, and I had never seen it.

Q Guttata?

A Yes.

Q Doctor, an operation, a corneal transplant, was performed on Mrs. Johnson at Yale-New Haven Medical

Center on January 5th of 1974. Are you familiar with that?

A Yes.

Q Did I furnish you with, from the Yale-New Haven Hospital record or Dr. Sears' record, a copy of the pathology report for that portion of the cornea that was removed from Mrs. Jonnson's eye?

A I saw that, but I would not be able at this moment to recall the details, except that I was pleasantly surprised that there was just a wrinkle in the cornea -- not surprised, but happy to see that was confirmed. DeVoe had thought it might be epithelium having grown in, and I said I didn't think th t could happen that quickly --

MR. RHEINGOLD: Your Honor, hearsay between a third party --

(Record read.)

THE COURT: The jury will disregard what he said about DeVoe and what Devoe thought.

MR. RHEINGOLD: Also, your Honor, the witness was talking about a record, operative note or a pathology note of Dr. Sears which was previously offered but has not gone in evidence.

THE COURT: That testimony will be received subject to offering of the exhibit.

MR. BEGOS: That record, your Honor, should be

part of the Yale-New Haven Hospital record which is in evidence.

MR. RHEINGOLD: No. I offered it as Plaintiff's Exhibit 4 and Mr. Begos objected.

MR. BEGOS: We don't have a complete record and we don't have a legible record.

MR. RHEINGOLD: Your Honor, it is either in or not in.

THE COURT: Are you withdrawing your objection to the offer at this time, Mr. Begos?

MR. BEGOS: Not until we get a complete record, because I don't believe there is a pathology report in that record that has been delivered here by the Yale-New Haven Medical Center.

MR. RHEINGOLD: Your Honor, there is also the same pathology note that was part of Dr. Sears' records which we offered as Plaintiff's Exhibit 3 to which Mr. Begos also objected.

MR. BEGOS: Can I have the pathology report? You have the record.

MR. RHEINGOLD: The court has them. Right here.

MR. BEGOS: I have no objection to the pathology report of the Yale-New Haven Medical Center of January 13th going into evidence. I offer it.

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THE COURT: That is only a part of the offer. Do you want to offer it separately?

MR. BEGOS: Yes, your Honor. Until I get the whole record.

THE COURT: Any objection to the offer of the pathology report?

MR. RHEINGOLD: No.

THE COURT: All right.

(Defendant's Exhibit E was received in evidence.)

BY MR. BEGOS:

Q Doctor, in that section of the cornea that was removed from Mrs. Johnson's eye for the transplant, the pathologist examined that section of cornea, did he not?

A Yes.

Q Is there any evidence in the pathological examination of that section of cornea of guttata?

A I am not sure this is the correct one because it says bullous keratopathy with corneal scarring and evidence of previous corneal graft. That's not typed very well but that's what the word looks like to me. This could be the second button.

THE COURT: What's the date of that, Doctor?

THE WITNESS: Date received, 1/13/75. I think the first corneal was done in January of '74.

THE COURT: I assume you want to withdraw that exhibit and offer another one?

MR. BEGOS: I will leave that exhibit in. I have to get the 1974 pathology report.

THE COURT: It's not there?

MR. BEGOS: Yes, it is.

MR. RHEINGOLD: No objection.

XXX (Defendant's Exhibit F was received in evidence.)

THE WITNESS: Do you want me to read the microscopic examination?

Q No, Doctor. Just tell us whether there is any indication by the pathologist who reviewed the tissue of guttata.

A No.

MR. BEGOS: I have no further questions.

THE COURT: We will take our afternoon break now. Ten minutes.

(Recess.)

MR. BEGOS: Your Honor, may I reopen my direct for two questions ?

THE COURT: Yes, you may.

BY MR. BEGOS:

Q Doctor, do you believe that you complied with community practice in the ophthalmological community in New York in 1972 with respect to the performance of the two operative procedures on Mrs. Johnson?

A Yes.

MR. RHEINGOLD: Your Honor, I move to strike the answer, I didn't have time to object, because it is a self serving question.

THE COURT: Overruled.

Q Doctor, with respect to informed consent in this community in 1972, do you believe that you complied with that standard as practiced by other ophthalmological surgeons in this community in 1972?

MR. RHEINGOLD: Objected to on the same basis, and the further basis that that is not the standard by which the doctor is to be judged.

THE COURT: I am not sure the question is clear, since it refers to informed consent. Do you understand what the question means and its reference to informed consent?

THE WITNESS: Yes, sir.

THE COURT: What do you understand that it means?

THE WITNESS: It means that we have told the patient what the chances of success for the operation are and that we are willing to ansewr any questions they ask, we never elaborate the various catastrophies that can happen, but if they ask about anything, we are very glad to tell them everything they want to know.

THE COURT: You are defining now the standard of informed consent. Is that correct?

THE WITNESS: As I understand it.

THE COURT: The question I will permit. I will overrule the objection.

Will you answer the question? Did you conform to that standard?

THE WITNESS: Yes.

Q Doctor, you have had discussions with other ophthalmologists with respect to what information they give to a patient with respect to a particular surgical procedure, have you not?

A Not prior to 1972. The last two years were the so-called malpractice crisis, yes.

MR. RHEINGOLD: Your Honor, I object to

that. I move that it be stricken.

THE COURT: The jury will disregard the reference to the malpractice crisis.

MR. BEGOS: I withdraw the question.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. RHEINGOLD:

Q Dr. Knapp, you say that your practice back in 1972 in performing cataract extractions was to tell the patient the chances of success but not to elaborate on the various catastrophies, is that correct?

A Yes.

Q You say that was except if the patient asked? If the patient asked, then you would tell them the various catastrophies?

A Yes. Anything they wanted to know.

Q How would a patient be able to ask you about the various catastrophies?

A They could say what happens to the people, the remainder, the difference between 100 and 90.

Q Did you from time to time have some patients who asked you that?

A Yes, indeed.

Q Did you find a good deal of difference in

your patients as to how talkative they were?

A I think that's true, yes.

Q Do you from time to time have patients who are what you might call plain folks who just rely on you?

A Yes.

Q Do you have people who don't even know enough ophthalmology to be able to phrase questions to you?

A No.

Q Do you ever have a patient who so stands in awe of you that he is afraid to ask a question?

A No.

Q How do you make a judgment that you don't have a patient who is afraid to ask questions?

A Most of our patients talk.

Q Are you able to tell some of those patients who aren't particularly fluent?

A I thought I was.

Q When you run across one of these patients who take what you say without asking any questions, do you increase what it is that you tell those patients?

A No.

Q Do you increase what it is that you tell a patient if the surgeon is elective?

A No.

Q Is this cataract surgery here elective?

A Absolutely.

Q Do you increase what you are telling a person if they are aged 40 as compared to age 70?

A No.

Q Would you increase what you are telling a person if he is a layman compared to a doctor?

A It depends on -- you mean a doctor of medicine?

Q Yes, who was a patient of yours.

A I would probably tell the lay person more. You would hope that the professional person wouldn't need it.

Q How much less did you tell those two doctors on whom you did bilateral cataract extracions than you told Mr. and Mrs. Johnson?

A The professor from Bucharest came in asking for cataracts, and we didn't discuss anything else except how long he would be incapacitated, how soon he could get his contact lenses.

Q Did you ask him what his vision was like?

A Before -- I had examined him before we went into this. We knew he had cataracts and he was down around 20-60, 20-70.

Q Doctor, these various catastrophies, as you say, you were well aware of them?

A Very much so.

Q Over the years of your experience, you had heard about them happening in other people's patients, yours aside, isn't that true?

A Yes.

Q You knew, for example, that there was a small risk but a definite risk that a person might go blind as a result of cataract surgery?

A That's correct.

Q That's something you didn't state to Mrs. Johnson, isn't that true?

A I said she could lose her eyes.

Q You said to Mrs. Johnson she could lose her eyes?

A Yes.

Q When did you say that?

A Well, the routine I go through with everybody is that this is a minor operation as to life but you can lost your sight, because this is a major operation as far as the eye goes.

Q You are saying, Doctor, now, under oath, that back in -- was that September, 1972 -- you said to

Mrs. Johnson you could lose your sight?

A I tell this to everyone.

Q You have a specific recollection of having a conversation with Mr. and Mrs. Johnson?

A No, I can't remember four years --

Q In fact you don't remember that day when they were in your office, do you?

A I remember their both sitting there and talking to them.

Q Do you remember doing an eye examination in September, 1972?

A Not without looking at the record, no.

Q So you had to look at the record to refresh your memory, didn't you?

A About that, yes.

Q Remember when you said that you were told by Mrs. Johnson that she couldn't read a newspaper, that you got by refreshing your memory looking at your records, didn't you?

A Yes.

Q You don't have any recollection sitting here today of her sitting there and telling you that, do you?

A It was her first statement when she walked in.

Q That's based upon reading the records, you

just said, isn't that so?

A Well, I also remember her telling me she had trouble driving, which I didn't write down.

Q Do you remember now sitting there that she told you back in 1972 that she couldn't read?

A Yes. Read newspaper.

Q You also recollect now but you didn't write it down that she told you she had trouble driving?

A Yes.

Q Is there anything else that you didn't write down that you recollect now that she said to you?

MR. BEGOS: On that visit?

Q On that visit of September, 1972.

A No.

Q Doctor, on that day do you recollect Mrs. Johnson saying to you that she was afraid of surgery?

A I don't recollect it, but I think this is a very common reaction. We would all be afraid of surgery on ourselves.

Q Did you give reassurances to Mrs. Johnson?

A Yes.

Q What type of reassurances did you give her?

A By telling her the percentage was all in her favor, percentage of success.

Q Doctor, I don't believe you were here when she testified the other morning, but she said you said that the success rate was 95 per cent. Is that what you said?

A I might have. I usually say over 90.

Q When you were on the stand here today, you said bad results in 5, 6 or 7 per cent of the patients.

A That would mean over 90.

Q 95, if you only have a 5 per cent bad rate, isn't that true?

A That's right.

Q Isn't it a fact that you told Mrs. Johnson that this was minor surgery?

A It is, as far as life and death.

Q Are you stating under oath that you told her that as far as her eyes went, it was major surgery?

A Absolutely.

Q And that she could go blind?

A Yes.

Q Do you remember answering interrogatory questions, Dr. Knapp, at some earlier phase of this case?

A No, but I am sure you are going to remind me.

Q Right.

Doctor, do you have your office folder in front of you?

A Yes.

Q Weren't you asked by Mr. Shiavetti's office, Mr. Begos' office, to draft up some answers to questions which I had put to you?

A Yes.

Q Dr. Knapp, are you able to find there interrogatory No. 28 and its answer? I will read the question and then I will read you the answer which you gave, Doctor. Perhaps you can follow along in your own handwriting in your own folder there.

A I have the typed copy.

MR. RHEINGOLD: Your Honor, I am reading from an interrogatory previously read to the jury, No. 28, set of interrogatories and the answers given, a supplemental answer.

Q 28A. What are all of the explanations and statements you made orally or in writing to plaintiff about the proposed cataract surgery before it was performed in either eye?

A. Told better than 90 per cent chance of success without listing specific causes of failure.

B. Please state all risks, side effects, benefits and alternatives, including non-treatment, if any, which you gave her?

The answer, Doctor, to B under oath is "Same as above plus it is an elective procedure that is done when patient desires it because of visual handicap."

Have I read correctly the answers which you gave?

A Yes. That's what I have typed here.

Q Nowhere among those answers did you state that you told her that she could go blind or lose her vision, isn't that true?

A That's correct.

Q Doctor, did you tell her on this occasion in September, 1972 when you had this conversation that there was nothing to worry about in this surgery?

A I know that's what she told me, but obviously she had something over 90 -- a residual from 90 per cent to worry about.

Q She told you there was nothing to worry about?

A No. I said that there is nothing to worry about, except that there was only a 90-odd per cent chance of success.

Q Do you deny that you said to her there was nothing to worry about?

A We do everything we can to reassure patients.

Q Doctor, how did you question Mrs. Johnson when she came into your office that day on September 18, 1972 about what her vision was like?

A I can't recall that, except all I have is the history here, which she said she was much worse.

Q Below that in your records you have "unable to read newspapers"?

A Yes.

Q Is that a statement to your nurse or to you?

A To me.

Q Did you ask Mrs. Johnson "How can you see out of your right eye, how do you see out of your left eye?"

A No.

Q That was not your practice then, was it, Doctor?

A I tested each eye separately.

Q Was your ultimate criterion in doing this eye operation the subjective report to you of the patient about her vision?

A No. It was the finding that she could only

see 20-60 at room conditions with the better eye.

Q Doctor, are you saying that it was that visual acuity reading and not the plaintiff's complaint -- Mrs. Johnson's complaints to you that determined that you were going to do the operation?

A Well, if her complaints didn't fit the picture, I'd look for another cause.

Q Did you state this morning on your direct examination that the operation is up to the patient?

A Yes.

Q When the patient is sufficiently handicapped with her vision, that's thetime you do the operation?

A Yes.

Q Could you have asked her to let's say place her hand over one eye and then over the other eye and tell you what her vision was like?

A This is what we do when we test the visual acuity of each eye. We don't use our hand, but we use a cover.

Q Did you ask her other than reading the chart, that Snellen chart, did you say "What's it like when you try and read, Mrs. Johnson, with just your right eye"?

A That was the eye she was seeing with.

Q Did you ask her what happens if you cover up

one eye and you just try and do your household chores with the other eye?

A No.

Q Doctor, as a matter of fact, you testified this morning, I believe, I wrote it down, I think I have it accurately, you assumed it was both eyes that were involved, isn't that true?

A I assumed she was using both eyes.

Q That when she reported to you that she had vision troubles, you assumed she was reporting to you about both eyes?

A Yes.

Q You didn't test that assumption that you made plenty other than what you did with your visual acuity test?

A No. That's the routine.

Q Doctor, a simple question to her about what do you see out of your right eye alone could have revealed a considerable amount of information to you, wouldn't it?

A. We tested that, and we have known that for over a year the left eye has been poor.

Q That's right. But did you ask her what her vision was like driving, housework, out of her right

eye alone?

A It was getting to the point where she said it was much worse.

Q Doctor, I don't believe you were here, but I am sure you have been informed that Mrs. Johnsop stated under oath that she could see out of her right eye to read, to drive and do housework. You didn't hear that, did you?

Q Do you think that's a falsehood?

MR. BEGOS: I object to the form of that question, the characterization of one by another of --

THE COURT: Sustained.

Q Do you think that her statement as compared to what you have down here in writing, Doctor, is a failure of communication between two parties, the patient and the doctor?

A I read some of her testimony and she had forgotten a great deal. I don't know how she could remember how well I tested her.

Q This is not a case of her forgetting something, Doctor. She made a statement about her ability to drive and read. Let me ask you this question, Doctor. If Mrs. Johnson had said to you or the hypothetical patient came to you and said "Out of my right eye I

can see, I can read, I can drive, I can read a newspaper, I can read my school reports for my children, I can read the mail," would you have performed a cataract extraction of that eye?

A I wouldn't perform one on either eye.

Q It wouldn't make a bit of difference what the visual acuity was or whether there was a cataract in the eye if the patient said "I have satisfactory vision on that eye," would it?

A For two years we have been following her.

Q No matter how long the history is, Dr. Knapp, the patient says to you "I have for me in my lifestyle a satisfactory vision." You wouldn't perform cataract surgery, isn't that true?

A Yes.

Q In fact you have said you wouldn't even tough the other eye even though it might have a cataract in it?

A This is what we were waiting for, for the good eye to get bad, or the better eye to get bad.

Q If the patient says to you "In my better eye I have satisfacgory vision,and as my life goes with these two eyes, I have satisfactory vision," then even though you saw some opacity in the better eye,you

wouldn't operate, isn't that true?

A That's correct.

Q It wouldn't make any difference whether it was a cortical cataract, a nuclear cataract or a posterior subcapsular cataract?

A That's correct.

Q Although as you said Mrs. Johnson had a posterior subcapsular cataract, if it didn't interfere significantly, subjectively, with her vision, then it wouldn't be an indication for performing that operation?

A She had had the posterior subcapsular cataract ever since I had known her.

Q That's right. On the first three visits it had not interfered enough with her vision, according to your tests or according to her subjective testimony to justify a cataract extraction?

A That's correct.

Q Doctor, how much change had there been in her right eye from the time you first saw her in June, 1970 down to September, 1972 --

A It had gone from 20-25 to 20-60.

Q Let's take corrected vision that you have got in here. Is it correct that it had gone over those four periods from 25, 25, 25, 30?

A Yes, but that's with the lights out.

Q You're reading with the lights out, the way you say you tested her, when it only went up one line on the eye chart -- isn't that true?

A Yes.

Q Doctor, I am showing you what's previously been admitted into evidence as Plaintiffs' Exhibit 6. That one line, I don't know if you are familiar with the form of this particular chart, would be the difference between 20-25 where my finger is and 20-30, that is to say just above and below the green line, is that correct?

A Yes.

Q Doctor, I know I had you talking about corrected vision and I will come back to that in a minute. In her left eye with corrected vision from the time that you first had seen her to the time that you suggested surgery, had her vision gone corrected from 20-30 to 20-400?

A Yes.

Q Would that be on this chart as I am holding it up in front of the jury from that line right above the green line to the big E at the top?

A The big E could be either 20-200 or 20-400. That looks like a 20-200.

Q I stand corrected. That's 20-200. Is 20-400 something that's substantially bigger than that?

A Just about twice the size.

Q That in her left eye, Dr. Knapp, was a substantial diminution of vision, is that correct?

A Yes.

Q Certainly if that were the only eye she had, a cataract extraction would have been called for?

A Yes.

Q Doctor, when you did measure her corrected vision in September of 1972, I take it from yournotes that you measured it both at distance reading and at near reading, is that correct?

A Yes.

Q When we say distance, is that reading this type of Snellen chart that you just looked at?

A I use a projector chart, but it's the same thing.

Q It is a slide and you project it on a screen?

A Yes.

Q Was her reading the same both when you had her read something near and reading something far?

A With the right eye she was still able to read 20-30 minus.

Q When you had her with that distance reading, you used a lens with a diopter point 75, is that correct?

MR. RHEINGOLD: Just so the record is clear, your Honor, I have been reading from Plaintiffs' Exhibit 2 in evidence.

Q That's not a particularly strong lens, is it?

A It is considered an insignificant one, unless you are quite old.

Q Did you try to improve her vision with stronger lenses?

A This is the best one I could find. This is the total refraction. It isn't just picking one lens.

Q You tried a variety of lenses, and you found that a relatively weak lens would give her a 20-30 minus reading?

A That's with the lights out.

Q All right. Doctor, why do you say that that was done with the lights out?

A The optics of the situation are simple.

Q I am going to interrupt you because I didn't phrase my question properly. On what basis do you

testify to this jury that this particular measurement was done with the lights out?

A Because that's my routine in the office.

Q Doctor, do you have the original of your records in front of you?

A Yes.

Q After where you have written 20-30 minus, you then have written with lights down, is that correct?

A Yes. That's in addition.

Q When did you put that on there?

A I don't remember.

Q Sometime after this lawsuit was started?

A I can't answer that, but I would guess yes.

Q After the lawsuit --

A I had not looked at the record in between.

Q This record is something that your secretary typed up based upon notes you gave her?

A Yes.

Q And she had not typed with lights down?

A That's right.

Q You wrote it in later, is that correct?

A Yes.

Q You didn't write with lights down in the section where you had her near reading for that date,

did you?

A The near light is behind the refractor. You don't turn the top light on. You just turn the one behind her. It comes from behind her right shoulder.

Q Back in 1970-1971, when you did the reading of her lens corrected in her right eye, you didn't write the term with lights down, did you?

A There was practically no difference then. I was explaining the difference.

Q You said you think now, thinking back on it, you probably put this comment "With lights down" on your notes after the lawsuit started?

A I would guess yes.

Q Doctor, you did not make a similar addition to your entries in the Columbia Presbyterian record, did you? Now I am referring to Plaintiffs' Exhibit 1, page 2. Do you have that record there, Doctor?

A I don't see that one.

Q I am handing you Plaintiffs' Exhibit 1, Doctor. Dr. Knapp, in Plaintiffs' Exhibit 1 there is a typed entry, is there not, in the record?

A My secretary merely summarized the findings of that examination on the 18th of September, so they should be identical, but I don't change a hospital record.

That's not my personal record.

Q But certainly after the lawsuit was started you didn't go back and write in there "with lights down"?

A No.

Q But you did make some changes in this record at some time, didn't you, Doctor?

A No.

Q You see above where you have in typewritten "VOSSC," and then before 20-400 you have put a --

A The secretary has no symbol for that reverse arrow, and I wrote that at the time that I signed it.

Q At the time you signed it you didn't make a clarification of this reading of her eyes, the 20-30 minus, with the lights down, is that correct?

A This is taken from my personal record, so I could write anything I wanted on there.

Q You made the one change we have talked about indicating giving that symbol that was less than 20-400?

A Yes.

Q Doctor, when you had this reading of 20-30 minus, minus what is that?

A It means she couldn't read the entire 20-30 line.

Q Do you know now how many letters it was she missed?

A I would guess probably two or three.

Q You didn't count them at the time?

A No.

Q She didn't miss so many that it was really properly called 20-40 plus, for example?

A If she had only gotten one or two letters on the line, then I would have written 20-40 plus. It is LOTYSMS3, that's eight letters, so if you get two we give you a plus. If you miss three we give you the other line minus two.

Q Doctor, you made an examplation of the retina of Mrs. Johnson in both her eyes in September, 1972, is that correct?

A Yes.

Q You made a record about your ability to see into each of those eyes?

A Yes.

Q In looking into each eye, you looked back into the rear of the eye?

A Yes.

Q That's called the fundus?

A Yes.

Q You would have to look through the lens?

A Yes.

Q You have to pass your light through the lens?

A Yes.

Q When you attempted to pass through the light, the light through the lens in her left eye, you wrote fundus left eye dimly seen, is that correct?

A Yes.

Q Was that dimly seen because there was this large opacity there?

A Yes.

Q Yet when you have written in your description of the fundus of the right eye for September, 1972, you have written okay, is that correct?

A Yes. That was with the pupil dilated so you could see around the small opacities that are blocking out with the small pupil.

Q With dilation in the left eye you still couldn't see --

A No, it was hard to see. That cataract had really come along.

Q That had grown very rapidly, hadn't it?

A Well, it had certainly progressed. You can see a lens go completely opaque in a matter of

weeks or just a few months, so you can't really say that th is was very rapid.

Q At any time, Doctor, when she was your patient up to the time you did the cataract surgery, did you ever prescribe eyeblasses for Mrs. Johnson?

A No. There was no indication.

Q Did you ever attempt to give her a trial of glasses in September, 1972?

A No.

Q Have you in your practice sometimes prescribed glasses for people whose vision is no longer 20-20 becasue of opacities in their eyes?

A In nuclear cataracts where they are near-sighted, yes.

Q Did you ever make a drawing of the type of cataracts that you say were in her eyes?

A No.

Q After you had these two lenses removed during the sugery in October, 1972, did you send them off to a pathology lab?

A No.

Q Were any pictures ever taken of the opacities in the lenses of Mrs. Johnson's two eves?

A No.

Q Was a movie similar to the one we saw here made during the course of the operation of Mrs. Johnson's eyes?

A No.

Q Dr. Knapp, you said on direct examination that you are the conservative school as far as not removing both lenses on the same hospitalization, is that correct?

A Yes.

Q I believe you said that other doctors do it at leaset more freely than you do it, is that correct?

A Yes.

Q Why are you more conservative, sir?

A I like to have one ship safely home in port before you send the other one out.

Q That is the basis, is it not, Doctor, that there is a risk with any eye surgery, isn't that true?

A That's correct.

Q And that if the first eye that you operated on, the first lens removal, went bad, then you would have important information as far as what the second eye was going to do, is that correct?

A Yes.

Q If some horrible consequence happened in the

first eye, it would give you a good deal of caution as far as the second eye?

A Absolutely.

Q Where the patient had at least some useful vision in the seond eye or better eye and you operated on the poorer one, then if it went wrong, you wouldn't touch the better eye, would you?

A I'd be very hesitant about doing it.

Q You would only do it when you absolutely had to?

A Whenever the patient insisted.

Q Do you have patients that insist on surgery?

A I have had patients where I thought they had good enough vision to get along and they have insisted.

Q What do you do when they insist?

A Go ahead and do the operation.

Q How about patients who you think need it and they don't?

A That's their choice.

Q You say you don't urge patients to have surgery?

A Never.

Q Doctor, if whatever happened to -- something

did happen to Mrs. Johnson, just taking her left eye alone, is that correct?

A The left eye went perfectly uneventfully.

Q Eventually something went wrong?

A Yes.

Q Today you know she has limited usefulness of that eye?

A That's correct.

Q For example, one thing she developed was this what you call Irvine-Gass syndrome?

A Yes.

Q Knowing that that had happened, for example, if you had not yet touched the right eye, that would be one of those cautions, would it not, for going into the right eye?

A It's true. If you get an Irvine-Gass in one eye, the odds are very greatly in favor of your getting it in the second eye.

Q When you say I will get it in the second eye, that is as a result of cataract surgery in the other eye?

A Correct.

Q It certainly wouldn't just spread across if you didn't touch it?

A Oh, no, I didn't mean that.

Q Knowing it could develop, you might take some sort of extra precautions, could you not?

A There are no precautions. All you would do is delay.

Q You think that one of the reasons for delaying in general is that the diseases which are of unknown casue eventually become known?

A Well, if the Irvine-Gass had gone on to failure the way of Dr. Sears' patient that he mentioned, and this patient really didn't have useful vision, then you are going to have to do the other one at some time.

Q I don't think I made my question clear, Doctor. As the progress of medicine is such that diseases or conditions which are of unknown cause become known as to cause?

MR. BEGOS: Absolutely, you mean?

Q As time goes by, more and more causes are discovered, aren't they?

A We still don't know the basic cause of cataracts. That's been going on since way before -- many years B.C.

Q There are a lot of conditions which in your lifetime as a doctor, Dr. Knapp, it's been determined what

the cause of them were?

MR. BEGOS: I object to this, your Honor, speculative. No relevance.

THE COURT: Yes. There is no suggestion that he would have delayed while waiting for science to find a solution to Irvine-Gass syndrome.

MR. RHEINGOLD: Your Honor, maybe I could answer your objection by another question.

Q If, for example, twn years had gone by, Dr. Knapp, between the operation on the first eye and the second eye, in ther period it is possible that a cause for Irvine-Gass syndrome could have been discovered, isn't that true?

MR. BEGOS: Objection.

THE COURT: Sustained.

Q Dr. Knapp, you told us that over your entire year only four times have you operated bilaterally on a patient in the same hospitalization, isn't that true?

A Yes.

Q Yet you have done hundreds and hundreds of cataract extractions?

A That's correct.

Q How many had you done bilaterally, both eyes, before you did Mrs. Johnson?

A I'd done one.

Q Did you tell that to Mrs. Johnson?

MR. BEGOS: Objection.

A I don't think I specified --

THE COURT: Excuse me. Overruled.

Q You can answer.

A No.

Q Did you tell her that youwere very conservative and it was rarely if ever that you did two eyes?

A I said there needed to be an indication.

Q What did you tell Mrs. Johnson the indication was?

A She told me. She is the one that wanted the second eye done.

Q How did she say that to you?

A She said that it would mean two periods of convalescence, the whole works twice.

Q Are you quoting as best you can remember now what you claim she said to you?

A Yes, very much so.

Q She wanted to avoid the whole works twice?

A Yes. She had four small children at home, and I considered that a sufficient indication.

Q Did you tell her about your hesitations about

doing two eyes at the same time?

A Yes. But I said a lot of people do it all the time.

Q Doctor, I had previously asked you what it was that you told her about the risks and benefits. Are you telling me now something new thatyou said to her that she --

MR. BEGOS: I object to her. That is not the same question in the same area.

MR. RHEINGOLD: I will withdraw the question.

Q Is it your testimony, Dr. Knapp, now that you said to her that you had some hesitations about doing both, but if she wanted them you would do them?

A Only after she suggested it.

Q Were you able to determine what Mrs. Johnson's sources of knowledge were about cataract operations?

A No.

Q Did she appear to you to have done any reading on the subject before you discussed it with her?

A I knew she had seen two other doctors.

Q Did you know anything else about possible sources of information ?

A No.

Q One of those doctors was an optomestist?

A She merely said doctors to me. I assumed they were ophthalmologists, but I didn't --

Q Did Mrs. Johnson appear to you to be the kind of person who had some sources of information about cataract surgery?

MR. BEGOS: I object to the form of that question, unless he is more --

THE COURT: I think you can be more specific.

Q Isn't it a fact, Dr. Knapp, that Mrs. Johnson was relying on your medical knowledge in making up her consent to have surgery?

MR. BEGOS: Objection.

THE COURT: He can answer as to what his understanding was.

MR. BEGOS: He is asking for a conclusion by the doctor as to Mrs. Johnson's state of mind.

THE COURT: I think that's relevant. Overruled.

A If a patient comes to a doctor and stays with him, you setup what they call a doctor-patient relationship. She knew perfectly well thatI wasn't in any hurry to operate on her. I certainly wouldn't have waited two years if I had thought there was any -- if

I were aggressive about doing this. I would say many patients rely on their doctor, and I sometimes think that I am overconservative. I remember one patient that went somewhere else, had both eyes done, came back and I took care of him.

THE COURT: That isn't the question, Doctor. The question is whether or not you understood that Mrs. Johnson was relying for her medical information on you and you alone, or essentially on you.

THE WITNESS: You mean by medical or ophthamology?

THE COURT: Yes.

THE WITNESS: Yes. I would hope so.

Q You understood, Doctor, that she was looking to youfor your knowledge, isn't that true?

A Knowledge, skill, experience, whatever you want to call it.

Q And in fact you were the one who suggested or recommended to her that she have surgery?

A No.

Q Doctor, when Mr. Johnson testified this morning, he said that there was a bill of $500 for each extraction, is that true?

A Yes.

Q And that if only one eye had been done, you would have received a fee of $500 rather than $1000, isn't that true?

A Yes.

Q Doctor, is it correct that there is no way to judge the progression of opacities in the lens?

A You can judge the progression, but you can't judge it ahead of time without a crystal ball.

Q In other words, there is no set rate of progression of opacities in the lens?

A You can judge a little by one eye to the other.

Q In Mrs. Johnson's case, there was a great difference in the two eyes, was there not?

A The poorer eye got much worse, but now the good eye, which had been relatively stable, was showing signs of going down from 20-25 to 20-60.

Q And corrected from 20-25 to 20-30, is that true?

A Yes. You are reading it.

Q Reading and for distance, 20 over 30 minus, is that correct?

A Previously here, vision without correction had always been 20-30.

Q Did you testify --

A I mean for reading vision.

Q Did you testify on direct, Dr. Knapp, that while the majority of cataracts progress, not all of them do?

A That's correct.

Q So a minority might stop or be arrested for a period of time?

A Yes.

Q You got some mistory, did you not, from Mrs. Johnson that her sister had developed cataracts?

A I didn't get that history. There is nothing on my record.

Q Are you relying on your record as to whether or not you were told that? In other words, from the absence of what's in your record, you say you were not told about her sister?

A I certainly would have thought it would have been typed in.

Q Didn't Mrs. Johnson tell you that she had a sister who had cataract extractions nine years apart?

MR. BEGOS: I object to the form of that question.

MR. RHEINGOLD: We have already had

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testimony on that.

THE COURT: Overruled.

A I don't think I was here when I heard -- when that was brought out.

Q Assuming that's true -- I can't ask it that way. You have no recollection of having been told that?

A No.

Q Is that highly unusual, in your experience, Dr. Knapp, that a patient may come to operation for her two eyes nine years apart?

A As I said this morning, many patients are happy to go along with one eye the whole way and never have the second eye done. If the master eye, the dominant eye, happens to be done first and they get a great result of 20-20, they may be perfectly content and they may go for many years and not -- until they pass on, with never having had the other eye done.

MR. RHEINGOLD: Your Honor, I have another large area to go into. I wonder if I could go into that in the morning.

THE COURT: How long will that take?

MR. RHEINGOLD: About a half hour. I could get started, if you want.

THE COURT: All right.

(Witness excused)

THE COURT: We will recess until 10 o'clock in the morning.

(Court adjourned)

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ANNA R. JOHNSON and ROBERT K. JOHNSON

V. 74 CIV. 5437

PHILLIP KNAPP and D. JACKSON COLEMAN

April 29, 1976

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(In open court, jury not present.)

THE COURT: Alternate Juror No. 2 is not here. Do you want to wait a few minutes?

MR. RHEINGOLD: I just as soon.

MR. BEGOS: Let's wait.

THE COURT: If we go ahead, we will lose that one alternate, and we may need him.

(Recess.)

(Jury present.)

THE COURT: Dr. Knapp is on the stand?

MR. BEGOS: No, your Honor. I am going to call a witness out of turn.

XXX L A W R E N C E Y A N N U Z Z I, called as a witness, after having been first duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MR. BEGOS: